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Presidential Documents

Title 3—

The President

Executive Order 12824 of December 7, 1992

Establishing the Transportation Distinguished Service Medal

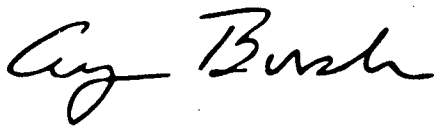
By the authority vested in me as President by the Constitution and the laws of the United States of America and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

Section 1. There is hereby established a Transportation Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Transportation to a member of the Coast Guard who has provided exceptionally meritorious service in a duty of great responsibility while assigned in the Department of Transportation, or in other activities under the responsibility of the Secretary of Transportation, either national or international, as may be assigned by the Secretary.

Sec. 2. The Transportation Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Transportation and shall be awarded under such regulations as the Secretary shall prescribe. These regulations shall place the Transportation Distinguished Service Medal in an order of precedence immediately before the Coast Guard Distinguished Service Medal.

Sec. 3. No more than one Transportation Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Transportation.

Sec. 4. The Transportation Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Transportation.



THE WHITE HOUSE,
December 7, 1992.

[FR Doc. 92-30098
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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AF02

Cost-of-Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to include the Commonwealth of the Northern Mariana Islands in the Territory of Guam allowance and differential area. The final rule entitles certain Federal white-collar employees in the Commonwealth of the Northern Mariana Islands to a cost-of-living allowance (COLA) and reduces the post differential currently payable in that area. The final rule also clarifies that the area would be known as the Territory of Guam and Commonwealth of the Northern Mariana Islands allowance and differential area. In addition, these regulations amend appendices A and B to subpart B of part 591, title 5, Code of Federal Regulations, to add the COLA and post differential for the Commonwealth of the Northern Mariana Islands, remove obsolete material, and include the current nonforeign area COLA rates and post differentials.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–3710.

SUPPLEMENTARY INFORMATION: OPM published a proposed rule with a request for comments in the **Federal Register** on July 21, 1992 (57 FR 140). The proposed rule was designed to expand the Guam allowance area to include the Commonwealth of the Northern Mariana Islands in order to improve pay equity among Federal employees in these areas.

The 30-day public comment period on the proposed rule ended on August 20, 1992. Comments were received from four employees, one Federal agency, and the Resident Representative to the U.S. for the Commonwealth of the Northern Mariana Islands. These comments are summarized below.

The Resident Representative and several employees were concerned that some employees in the Northern Mariana Islands might not receive COLA or, if they received COLA, might have their commissary and exchange privileges rescinded. OPM has established the following COLA rates in Guam: (1) A Commissary and Exchange rate for employees who have unlimited access to commissaries and exchanges by virtue of their Federal civilian employment, and (2) a Local Retail rate for employees who do not have such access or have access for other reasons (e.g., retired military and military dependents). The current Commissary and Exchange COLA rate for Guam is zero, i.e., no allowance is payable.

Employees in the Northern Mariana Islands do not have unlimited commissary and exchange privileges. There is only a small exchange and no commissary on the CNMI. Therefore, employees must travel by air or boat to make use of the facilities in Guam. In recognition of this, OPM authorizes payment of only the Local Retail COLA rate in the Northern Mariana Islands until such time that full commissary and exchange shopping opportunities are available. Although OPM has no authority concerning the extension of commissary and exchange privileges to Federal civilian employees, OPM has written to the responsible Department of Defense officials urging them not to let OPM's action in authorizing the Local Retail rate for the Northern Mariana Islands have any effect on the commissary and exchange privileges that these employees currently enjoy.

One employee requested the rationale for reducing the post differential from 25 to 20 percent. With this final rule, the Commonwealth of the Northern Mariana Islands ceases to exist as a differential area. Instead, the Territory of Guam allowance and differential area has been expanded to encompass the Northern Mariana Islands. This point has been clarified in the final rule. Under § 591.204(b)(5), the allowance area is denoted as the Territory of Guam and Commonwealth of the Northern Mariana Islands, and § 591.204(b)(5) (i) and (ii) have been deleted. The change in appendix B combines the Territory of Guam and Commonwealth of the Northern Mariana Islands into one differential area.

Several employees expressed concern that the reduction in the post differential would reduce their take-home pay. No employee will lose money as a result of the reduction in the post differential. The current COLA rate for the Territory of Guam allowance area is 12.5 percent, and the current post differential is 20 percent. Post differentials are payable to nonlocal hires to the extent that both the COLA and post differential, in combination, do not exceed the statutory maximum, which is 25 percent of an employee's hourly rate of basic pay. Eligible employees in the Northern Mariana Islands will receive the full amount of the COLA, plus an additional 12.5 percent post differential. The total will continue to be 25 percent of basic pay. However, COLA is not taxable for Federal income tax purposes.

One employee questioned whether COLA and post differential were separate and unrelated allowances in the U.S. Code. Unlike overseas differentials and allowances, the allowances payable to certain employees in nonforeign areas are combined under one authority in the law. The law describes two kinds of allowances, one based on living costs, the other based on conditions of environment—i.e., the post differential. The combination of the COLA and post differential cannot exceed 25 percent of an employee's hourly rate of basic pay.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

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

PART 591—ALLOWANCES AND POST DIFFERENTIALS

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

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

2. In § 591.204, paragraph (b)(5) is revised as follows:

§ 591.204 Establishment of allowance areas.

* * * * *

(b) * * *

(5) Territory of Guam and Commonwealth of the Northern Mariana Islands.

* * * * *

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

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

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

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska	
City of Anchorage and 50-mile radius by road:	
Local Retail	25.0
Commissary/Exchange	17.5
City of Fairbanks and 50-mile radius by road:	
Local Retail	25.0
Commissary/Exchange	20.0
City of Juneau and 50-mile radius by road:	
Local Retail	25.0
Commissary/Exchange	25.0
Rest of the State: All Employees	25.0
State of Hawaii	
City and County of Honolulu:	
Local Retail	22.5
Commissary/Exchange	12.5
County of Hawaii: All Employees	15.0
County of Kauai:	
Local Retail	17.5
Commissary/Exchange	17.5
County of Maui and County of Kalawao: All Employees	20.0
Territory of Guam and Commonwealth of the Northern Mariana Islands	
All Locations:	
Local Retail	12.5
Commissary/Exchange	0.0
Commonwealth of Puerto Rico	
All Locations:	
Local Retail	10.0
Commissary/Exchange	0.0
The Virgin Islands	
St. Croix: All Employees	12.5
St. Thomas and St. John: All Employees	12.5

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance category	Definition
Local Retail	This category includes those employees who purchase goods and services from private retail establishments.
Commissary/Exchange.	This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

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

4. In appendix B of subpart B, the listing for Canton Island, Guam, and Commonwealth of the Northern Mariana Islands are removed from the table and a new listing for the Territory of Guam and Commonwealth of the Northern Mariana Islands is added in alphabetical order to read as follows:

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

Geographic coverage	Percentage differential rate	Effective date
* * *	*	* *
Territory of Guam and Commonwealth of the Northern Mariana Islands.	20.0	First day of the first pay period beginning on or after January 8, 1993
* * *	*	* *

[FR Doc. 92–29518 Filed 12–8–92; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restriction on Importation of Meat From Australia and New Zealand

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts the quantitative restrictions on meat imports from Australia and New Zealand. This adjustment increases the permissible level of meat imports from Australia and New Zealand to reflect changes in the estimated meat imports from other supplying countries. Such an increase was provided for in voluntary restraint agreements with Australia and New Zealand.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Gerald W. Harvey (202) 720–8031, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, room 6616, South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of Australia and New Zealand whereby those countries have voluntarily agreed to limit the quantity of certain meats imported into the United States during calendar year 1992. Those agreements provided that, if it is subsequently estimated by the United States that the amount of meat imported from other supplying countries is expected to be less than the projected total use in negotiating the

maximum level of imports contained in those agreements, then the United States will promptly increase the total level of permissible imports from Australia and New Zealand by the estimated amount of the shortfall from other supplying countries. On November 6, 1992 (57 FR 53015), a reallocation totaling 20.4 million pounds was made increasing the limitations for calendar year 1992 for Australia from 736.8 to 749.46 million pounds and New Zealand from 446.8 to 454.54 million pounds. An additional shortfall is now expected to occur. Accordingly, this final rule provides for an increase in the permissible level of imports from Australia and New Zealand to reflect a second shortfall reallocation to Australia and New Zealand.

The concurrence of the Secretary of State and the United States Trade Representative has been obtained for the issuance of these regulations.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception of Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Imports, Meat and meat products.

Accordingly, Subpart A of part 16 of title 7 of the Code of Federal Regulations is amended as follows:

PART 16—LIMITATIONS ON IMPORTS OF MEAT

1. The authority citation for part 16 continues to read as follows:

Authority: 19 U.S.C. 2253 Note, 7 U.S.C. 1854, and E.O. 11539 (35 FR 10733), as amended by E.O. 12188 (45 FR 989).

2. Section 16.5 is revised as follows:

§ 16.5 Quantitative restrictions.

(a) *Imports from Australia.* During the calendar year 1992, no more than 751.38 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00, may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.

(b) *Imports from New Zealand.* During calendar year 1992, no more than 455.72 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00, may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Issued at Washington, DC, December 4, 1992.

Roland R. Vautour,

Acting Secretary of Agriculture.

[FR Doc. 92–30028 Filed 12–8–92; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 739]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 4 through December 10, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 739 [7 CFR 907.1039] is effective for the period from December 4 through December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC. 20090–6456; telephone: (202) 720–5127; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 85 percent of the total production in 1991–92. District 2 is located in the southern coastal area of California and represented about 13 percent of 1991–92 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 2 percent; and District 4, which represented less than 1 percent, is northern California.

The Committee adopted its marketing policy for the 1992–93 season on July 28, 1992. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 22, 1992, in Visalia, California; and Districts 2 and 3 on September 29, 1992, in Ontario, California. The Committee revised its crop estimate, utilization, and shipping schedule at its September 22 meeting and revised them again at its November 17 meeting. At its November 24 meeting and again at its December 1 meeting, the Committee adopted another revised shipping schedule. The marketing policy discussed, among other things, the potential use of volume regulations for the ensuing season. The marketing policy and the revised shipping schedule are available from the Committee or Mr. Nissen.

The Committee's revised estimate of 1992–93 production is 85,500 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 72,644 cars during the 1991–92 season. The Committee has estimated that about 61 percent of the 1992–93 crop of 85,500 cars will be utilized in fresh domestic channels (52,200 cars), with the remainder being exported fresh (12 percent), processed (25 percent), or designated for other uses (2 percent). This compares with the 1991–92 total of 44,875 cars shipped to fresh domestic markets, about 62 percent of that year's crop.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing this regulation are expected to be more than offset by the potential benefits of regulation.

A proposed rule, based on the Committee's 1992–93 marketing policy, was published on October 23, 1992, in the **Federal Register** [57 FR 48340] inviting comments on the quantities of fresh California-Arizona navel oranges that may be shipped weekly to domestic markets for the 10-week period from the week ending November 5 through the week ending January 7, 1993. That rule provided interested persons the opportunity to comment on a proposed weekly volume regulation shipping level of 1,800,000 cartons for the week ending December 10.

Five comments have been received, one from Sequoia Orange Company, Inc. (Sequoia), one from Foothill Farms, two from Bee Sweet Citrus, Inc. (Bee Sweet), and one from the Small Business Administration's Office of Advocacy (SBA). The comments addressed all ten weeks of the proposed rule. The Sequoia and Foothill Farms comments were addressed in the final rule published on November 17, 1992, in the **Federal Register** [57 FR 54169], the initial comment by Bee Sweet was addressed in the final rule published in the **Federal Register** on November 23, 1992, [57 FR 54898], and the comment by the SBA was addressed in the final rule published in the **Federal Register** on December 1, 1992, [57 FR 56803]. These comments warrant no further discussion.

In its second comment, Bee Sweet stated that handlers are unable to move the crop in a consistent manner, as a result of the marketing order, and that the onset of prorate has made supplies fluctuate. On an intraseasonal basis, the program promotes orderly marketing, the purpose of which is to furnish sufficient navel orange supplies to fresh markets throughout the season and to avoid price-depressing excessive shipments, particularly during the first few months of the season when supplies are heaviest.

If the program were discontinued, projections based on historical relationships suggest that the short-run effects would be much greater variability in weekly supplies and prices than occurs with the use of prorate regulations. Furthermore, mature navel oranges can be stored on the tree and picked as needed to provide the market with a more even distribution of supplies during the season. This on-tree storage feature is particularly valuable early in the season when a large portion of the crop is often mature but the market may not be able to absorb that amount of fruit at the time.

Bee Sweet commented that because the crop is so large, there should be open movement. The 1992–93 California-Arizona navel orange crop is large, currently estimated at 85,500 cars, compared to a previous 5 year average of 74,369 cars (not including the 1990–91 freeze year). However, the large size of this season's navel orange crop was a factor in the Department's decision to approve the use of prorate to provide orderly movement of the navel orange crop into marketing channels without disruptive gluts and accompanying price swings. Movement of the crop has been proceeding at a normal rate as compared to recent years, with about 10 percent of the total crop having already been marketed.

Bee Sweet also commented that, since prorate was implemented, prices have continued to fall. Navel orange prices normally do begin at a high level at the beginning of the season when supplies available for shipment are limited. However, as supplies become available, prices drop over the first few months of the season, but then stabilize for the remainder of the season. The use of prorate regulation may not prevent this early season decline, but it can help moderate extreme fluctuations in price by stabilizing the flow of product to market. The regulatory procedures which the Department must follow ensure that prorate allocations for each week are responsive to changing market conditions. Thus, volume regulations can provide for the maintenance of ample supplies of navel oranges to consumers at times when they are needed and the ability to obtain a price which will provide growers the incentive to stay in business.

Bee Sweet's last point was that the marketing order hurts growers, packers, the labor force, and the consumer. The goal of regulation is to increase returns to growers while providing consumers an adequate supply of the commodity in the marketplace. Volume regulations can lengthen the season during which oranges are shipped, creating a longer period of time in which citrus harvesters and packing line crews may be employed. Moreover, the stability

which growers seek through the marketing order regulations is of benefit to harvesting and packing crews as well. The aim of prorate is to provide steady supplies at as reasonable and as stable prices as practicable, thereby protecting the interests of growers, packers, workers in the navel industry, and consumers of navel oranges.

Therefore, for the reasons stated, the above comments in opposition to the proposed rule, as well as the alternatives presented, are denied.

The Committee met publicly on December 1, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with eight members voting in favor, two opposing, and one abstaining, that 1,800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93, marketing policy, and December 1 revised shipping schedule. The recommended amount of 1,800,000 cartons is consistent with the amount of cartons specified in the proposed rule, and is 100,000 cartons below the amount specified in the Committee's revised shipping schedule. Of the 1,800,000 cartons, 94.8 percent or 1,706,000 cartons are allotted for District 1, and 5.2 percent or 94,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this time.

During the week ending on November 26, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,156,000 cartons, compared with 1,273,000 cartons shipped during the week ending on November 28, 1991. Export shipments totaled 132,000 cartons, compared with 183,000 cartons shipped during the week ending on November 28, 1991. Processing and other uses accounted for 340,000 cartons, compared with 236,000 cartons shipped during the week ending on November 28, 1991.

Fresh domestic shipments to date this season total 6,388,000 cartons, compared with 2,726,000 cartons shipped by this time last season. Export shipments total 378,000 cartons, compared with 500,000 cartons shipped by this time last season. Processing and other use shipments total 2,116,000 cartons, compared with 626,000 cartons shipped by this time last season.

For the week ending November 26, regulated shipments of navel oranges to the fresh domestic market were 1,143,000 cartons on an adjusted allotment of 1,464,000 cartons, which resulted in net undershipments of about 321,000 cartons. Regulated general maturity shipments for the current week (November 27 through December 3, 1992) are estimated at 1,490,000 cartons on an adjusted allotment of 1,379,000 cartons. Thus, overshipments of about 111,000 cartons could be carried forward into the week ending on December 10, 1992.

The average f.o.b. shipping point price for the week ending on November 26, 1992, was $7.63 per carton based on a reported sales volume of 639,000 cartons. The season average f.o.b. shipping point price to date is $8.36 per carton. The average f.o.b. shipping point price for the week ending on November 28, 1991, was $10.39 per carton; the season average f.o.b. shipping point price at this time last year was $11.45.

The Department's Market News Service reported that, as of December 1, trading on California-Arizona navel oranges sizes 48–72 is "moderate", and "fairly slow" for all other sizes. However, it was reported that movement is expected to increase. The market was reported as "unchanged."

At the meeting, Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. Two members expressed concern about the amount of oranges displaying puff and crease. A Committee staff member reported that there are indications of puff and crease in District 1, and that it is a sign of over maturity. One Committee member indicated inventories have been reduced. Several members commented that the allotment established last week had helped. However, two members stated that prices are still unstable. The majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 3 at 1,800,000 cartons, 100,000 cartons lower than scheduled, while two Committee members favored open movement at this time.

According to the National Agricultural Statistics Service, the 1991–92 season average fresh equivalent on-tree price for California-Arizona navel oranges was $5.29 per carton, 71 percent of the season average parity equivalent price of $7.43 per carton. Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1992–93 season average fresh on-tree price is estimated at $3.49 per carton, about 45 percent of the estimated fresh on-tree parity equivalent price of $7.83 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 4 through December 10, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register.** This is because there is insufficient time between the date of the final recommendation of the Committee based on the latest marketing information, and the effective date necessary to effectuate the declared policy of the Act.

This action needs to be effective for the regulatory week which begins on December 4, 1992. Interested persons were given the opportunity to comment on a proposed rule published on October 23, 1992, in the **Federal Register** [57 FR 48340]. Further, interested persons were given an opportunity to submit information and views on the regulation prior to and at an open meeting, and handlers were appraised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1039 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1039 Navel Orange Regulation 739.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 4 through December 10, 1992, is established as follows:

District 1	District 2	District 3	District 4	*Total*
Cartons/ % (000)	Cartons/ % (000)	Cartons/ % (000)	Cartons/ % (000)	Cartons (000)
1,706/94.8	Open	94/5.2	Open	1,800

Dated: December 2, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–29969 Filed 12–7–92; 9:57 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 764]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to fresh domestic markets during the period from December 6 through December 12, 1992. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 764 [7 CFR 910.1064] is effective for the period from December 6 through December 12, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 [7 CFR Part 910], as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The Committee adopted its marketing policy for the 1992–93 season on May 5, 1992. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. This marketing policy is available from the Committee or Mr. Johnson.

Based on its revised crop estimate of 44,170 cars, the Committee estimates that about 40 percent of the 1992–93 crop will be utilized in fresh domestic channels (17,750 cars), compared with the 1991–92 total of approximately 17,000 cars. Fresh exports are projected at 16 percent of the total 1992–93 crop utilization, the same percentage for 1991–92. Processed and other uses would account for the residual 44 percent, again the same percentage for the 1991–92 crop.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing this regulation are expected to be more than

offset by the potential benefits of regulation.

A proposed rule, based on the Committee's 1992–93 marketing policy, was published October 29, 1992, in the **Federal Register** [57 FR 49023] inviting comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the 10-week period from the week ending November 14, 1992, through the week ending January 16, 1993. That rule provided interested persons the opportunity to comment on a proposed weekly volume regulation shipping level of 360,000 cartons for the week ending December 12, 1992.

Two comments were received, one from Associated Citrus Packers, Inc., and one from Sequoia Orange Company, Inc. The comments addressed all 10 weeks of the proposed rule. Both comments were addressed in the final rule published on November 23, 1992, in the **Federal Register** [57 FR 54900]. These comments warrant no further discussion.

The Committee met publicly on December 2, 1992, in Yuma, Arizona, to consider the current and prospective conditions of supply and demand and, by an 11 to 2 vote, recommended that 360,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1992–93 marketing policy. This recommended amount is consistent with the amount specified in the proposed rule.

During the week ending on November 28, 1992, shipments of lemons to fresh domestic markets, including Canada, totaled 249,000 cartons compared with 235,000 cartons shipped during the week ending on November 30, 1991. Export shipments totaled 102,000 cartons compared with 115,000 cartons shipped during the week ending on November 30, 1991. Processing and other uses accounted for 388,000 cartons compared with 235,000 cartons shipped during the week ending on November 30, 1991. Regulated shipments for the current week (November 29, 1992, through December 5, 1992) are estimated at 320,000 cartons.

Fresh domestic shipments to date for the 1992–93 season total 5,668,000 cartons compared with 4,774,000 cartons shipped by this time during the 1991–92 season. Export shipments total 2,096,000 cartons compared with 2,094,000 cartons shipped by this time during 1991–92. Processing and other use shipments total 5,018,000 cartons compared with 2,630,000 cartons shipped by this time during 1991–92.

The average f.o.b. shipping point price for the week ending on November 28, 1992, was $9.21 per carton based on a reported sales volume of 248,000 cartons compared with the previous week's average of $8.48 per carton on a reported sales volume of 280,000 cartons. The 1992–93 season average f.o.b. shipping point price to date is $12.09 per carton. The average f.o.b. shipping point price for the week ending on November 30, 1991, was $14.30 per carton; the season average f.o.b. shipping point price at this time during 1991–92 was $17.29 per carton.

The Department's Market News Service reported that, as of December 1, demand for lemons sizes 140 to 235 is higher, and for other sizes "about unchanged".

At the meeting, Committee members discussed different levels of shipments, as well as crop and field conditions. The majority of Committee members stated that due to volume regulations being implemented the previous week, the lemon market has stabilized. However, the export market continues to be depressed which exerts pressure on the domestic market. Members supporting volume regulation cited the need for continued market stability and good returns to growers. Two Committee members supported a lower level of volume regulations to increase returns. Thus, the Committee, by a 11 to 2 vote, recommended volume regulation be established at 360,000 cartons for the week ending on December 12, 1992.

According to the National Agricultural Statistics Service, the season-to-date on-tree price for California-Arizona fresh lemons is $7.29 per carton, 72 percent of the season-to-date parity equivalent price. The season average fresh on-tree price is projected at $9.12 per carton, 83 percent of the preliminary season average parity equivalent price of $10.96 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 6 through December 12, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date of the final recommendation of the Committee, based on the latest marketing information, and the effective date necessary to effectuate the declared policy of the Act.

This action needs to be effective for the regulatory week which begins on December 6, 1992. Interested persons were given the opportunity to comment on a proposed rule published on October 29, 1992, in the **Federal Register** [57 FR 49023]. Further, interested persons were given an opportunity to submit information and views on the regulation prior to and at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1064 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1064 Lemon Regulation 764.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 6 through December 12, 1992, is established at 360,000 cartons.

Dated: December 3, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92-29970 Filed 12-7-92; 10:10 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 91-150-2]

Scrapie Indemnification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising our scrapie regulations regarding payment of indemnification resulting from the destruction of sheep or goats affected by scrapie or exposed to scrapie, and bloodline animals, by removing the provisions for bloodline animals, establishing an indemnification payment amount of $150 for registered animals and $50 for other animals, and by making other, nonsubstantive changes. This rule, which is based on a consensus reached by the Scrapie Negotiated Rulemaking Advisory Committee, will affect the owners of sheep or goat flocks participating in the indemnification program by reducing the maximum indemnification that may be paid for each sheep or goat and by establishing new requirements for the payment of indemnity because of scrapie.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6954.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 54 (referred to below as the regulations) include provisions for the payment of Federal indemnification to the owners of sheep and goats destroyed due to the disease scrapie. Under the current regulations, if an animal is destroyed because it is determined to be either affected with scrapie, exposed to scrapie, or in the bloodline of an animal affected with scrapie, indemnification may be paid to its owner following appraisal of the animal at fair market value. The appraisal is done by an appraiser selected and employed by Veterinary Services, or, if the owner and State representative approve, the appraisal may be done by a Veterinary Services representative, either alone or with a State representative. The owner must agree, in writing, to accept this compensation from the United States government before the indemnification is paid.

The indemnification ceiling has been increased several times since the regulations were first promulgated in 1954 and is provided in § 54.7(a) of the regulations. Until this rule becomes effective, the amount paid to the owner as indemnification is equal to two-thirds of the appraised value of the animal, not to exceed $300 per head.

On July 30, 1992, we published two documents in the **Federal Register** concerning our scrapie programs that were developed using negotiated rulemaking. These documents reflected a consensus reached by the Scrapie Negotiated Rulemaking Advisory Committee (the Committee), a group consisting of representatives from the Animal and Plant Health Inspection Service (APHIS), sheep breeding organizations, sheep industries, and other parties with a stake in scrapie issues. One of the documents published was a final rule establishing the Voluntary Scrapie Flock Certification Program (57 FR 33625-33633, Docket No. 91-019-2). The other document was a proposal (57 FR 33656-33661, Docket No. 91-150-1) to amend our scrapie indemnification program by removing the provisions for bloodline animals, establishing an indemnification payment amount of $150 for registered animals and $50 for other animals, and by making other, nonsubstantive changes. This proposal, referred to below as the proposed rule, invited comments to be submitted on or before September 14, 1992.

Proposed Rule Comments and Responses

We received nine comments prior to the closing date. All the comments supported the indemnity program. Seven of the commenters also suggested that the indemnity program should be available only for a limited time period, an alternative discussed in the proposed rule. One of the commenters also suggested that animals to be destroyed under the indemnity program could be sold to slaughter, and the sale price subtracted from the Federal indemnity payment, thus reducing Federal indemnity costs. This commenter also suggested that heads and offal from these sheep could be collected and incinerated at slaughter to eliminate those tissues with the highest risk of spreading scrapie.

Limited Time Period

The commenters requesting a limited time period noted that the Committee supported a scrapie indemnity program limited to 6 months of operation, to encourage owners of eligible animals to promptly apply for indemnity, which would facilitate a rapid and thorough "clean-up" of flocks that may spread scrapie. The Committee viewed such a "clean-up" period as complementary to establishment of the Voluntary Scrapie Flock Certification Program, which could have more success in reducing the incidence of scrapie over the long term if a large number of scrapie-positive sheep are eliminated at the outset of the program.

The proposed rule explained that APHIS was reluctant to specify a limited time period for indemnification due to uncertainties about the precise dates when the agency could be ready to begin processing applications, and about the availability of sufficient funds for indemnification. Since the proposed rule was published, we have made sufficient progress in organizing resources for the proposed program to allow us to plan specific date limits for indemnification. Therefore, we are adding a sentence to § 54.2(b) of the regulations to limit the period during which applications for indemnification may be made, in accordance with the views of the Committee and the commenters. This new sentence reads, "No indemnification payment shall be made for any application unless it is received in complete form on or before July 7, 1993."

As discussed in the proposed rule, if at any time funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity are not sufficient to pay all owners whose indemnification applications were received on time and approved by APHIS, available funds will be paid in chronological order based on the dates that applications were approved until available indemnification funds have been exhausted.

Allowing Slaughter of Sheep Eligible for Indemnity

We are not making any change in response to the comment that suggested allowing animals to be destroyed under the indemnity program to be sent to slaughter. The basis of the comment is that even if an animal is infected with scrapie, there is no scientific evidence that the meat from the animal poses a health risk for humans or animals, and therefore no reason why such meat should not be marketed, recouping some

of the value of animals destroyed through the indemnification program.

There are two reasons why we are not making this change. First, although there is no evidence that meat from scrapie infected animals poses a risk, the nervous tissue and other organs of such animals could serve as a source of infection for other animals if allowed to enter the animal food chain. We do not believe we can establish controls over the slaughter process that would ensure the safe disposal of the nervous tissue and other organs. Second, our experience with animals in slaughter channels has shown that there is a risk that animals supposedly destined for slaughter are sometimes diverted, sold, and introduced into new flocks. Such diversion of animals that are supposed to be destroyed in accordance with the indemnification program would expose new flocks to scrapie, and defeat the basic purpose of indemnification.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposed rule as a final rule, with the change discussed above.

Executive Order 12291 and Regulatory Flexibility Act

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

At present, there are about 11 million sheep and 2 million goats in the United States. This includes approximately 785,000 registered sheep and 10,215,000 nonregistered sheep. These animals are divided among approximately 112,000 flocks or producers, including approximately 26,000 registered flocks and 86,000 nonregistered flocks.

The current regulations allow owners of flocks affected by scrapie to apply for Federal indemnification. Indemnification may be paid for affected animals, bloodline animals and, in some cases, animals exposed to affected animals. Over the past 10 years approximately 10,000 animals have been destroyed in accordance with the regulations, with $2.2 million, or an average of $220 per animal, paid in indemnification. The indemnity paid was based on two-thirds of the fair market value of the animals destroyed, up to $300 per head. However, funds limitations meant that not all applications for indemnification were approved.

This final rule limits the indemnity paid to $150 per head for each registered animal destroyed and $50 for each other animal destroyed. In addition, this rule requires applicants for indemnification to meet certain additional requirements, not in the current regulations, regarding access by APHIS to records concerning the flock, and participation by the flock owner in the Voluntary Scrapie Flock Certification Program.

Despite the facts that the rule authorizes a smaller average indemnity per animal and requires flock owners to meet more conditions to qualify for indemnification, we believe that the rule will result in a large increase in applications for indemnification. This expectation rests on several factors. Since this indemnification program is intended to be discontinued after the number of scrapie-infected and scrapie source flocks has been sufficiently reduced, after which indemnification applications will not be accepted, flock owners who have been putting off applying for indemnification (perhaps waiting for the optimum situation of economic return) will be encouraged to apply while they can. Also, market conditions have increasingly turned against owners of animals from flocks known or suspected to be scrapie-infected or scrapie-exposed. As it becomes harder for these owners to sell their animals on the open market at a profit, they will become more motivated to apply for indemnification. Finally, many flock owners plan to join the Voluntary Scrapie Flock Certification Program, which requires them to dispose of any scrapie-infected or scrapie-exposed sheep or goats they possess. The indemnity regulations will allow these flock owners to recoup at least part of the cost of these animals.

The cost of the indemnification program may fall anywhere within a wide range, depending largely on the total number of animals for which indemnification is paid. The indemnification payment per animal is fixed at $150 for a registered animal and $50 for each other animal. We expect that flock owners will apply for indemnification for approximately 48,000 animals that are eligible for indemnification. This figure is based on the total number of infected flocks known to APHIS, and estimates by the American Sheep Industry Association of the number of sheep and goats eligible for indemnification.

APHIS data show that there are approximately 16,000 sheep known to be in infected or source flocks, and there is a reasonable expectation, based on the limited data available in this area, that the real figure for sheep in infected or source flocks is several times this number. As discussed above, we expect most flock owners eligible for indemnification, especially owners of registered sheep eligible for the higher indemnification rate, to apply for indemnification during the 6 month period when indemnification will be available.

In light of this expectation, we estimate that indemnification costs to APHIS will fall in a range between $2.4 million (the indemnification cost for 48,000 nonregistered sheep or goats) and $7.2 million (the indemnification cost for 48,000 registered sheep or goats). We believe that registered animals are likely to comprise about 70 percent of the requests for indemnification, resulting in a total indemnification cost of approximately $5.76 million.

Sheep and goat owners applying for indemnification will endure a cost consisting of the difference between the indemnity payment they receive and the market price they could have obtained for the destroyed animals. However, in very many cases, there is no market for animals from flocks affected with scrapie, meaning that owners do not have the option of selling the animals for more than the indemnification price. Sheep and goat owners applying for indemnification will also pay whatever costs they incur in applying for indemnification and complying with the conditions involved in qualifying for it. We do not expect these application and compliance costs to be substantial, but we currently have insufficient data to estimate them.

The Committee considered various alternatives to this rule. One alternative was to establish a program to destroy all flocks containing infected and exposed sheep or goats, using a broad definition of "exposed," and without expressing any intent to discontinue indemnification after it has achieved specified goals. Depopulating entire flocks in this way would cost the Federal government many millions of dollars in indemnification payments, and would result in vast losses of animals to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely

present minimal risk of transmitting the disease and, by sheer volume, would account for most of the indemnification paid. This approach could also lead to abuse of the indemnification provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnification they would receive. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive indemnification payments. Also, when sheep market prices are low, flock owners eligible for indemnification might enlarge their flocks by buying low-cost animals in order to maximize their indemnification payments.

A majority of the approximately 112,000 sheep flocks or producers in the United States are small business entities. Most of the flock owners who have applied for indemnity in the past have been small entities, and this will probably continue to be true under the proposed indemnification program. We expect no more than approximately 500 small entities to apply for indemnification under the new indemnification program. Applicants who are approved will probably accrue a slight economic benefit from the indemnity payment, compared to the prices for which they could otherwise sell their sheep.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0101.

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

Accordingly, 9 CFR part 54 is amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h,; 7 CFR 2.17, 2.51, and 371.2(d).

2. Part 54 is amended by revising "Subpart A—Animals Destroyed Because of Scrapie" to read as follows:

* * * * *

Subpart A—Scrapie Indemnification Program

Sec.
54.2 Animals eligible for indemnification payments.
54.3 Application by owners for indemnification payments.
54.4 Certification by owners.
54.5 Amount of indemnification payments.
54.6 Procedures for destruction of animals.

* * * * *

Subpart A—Scrapie Indemnification Program

§ 54.2 Animals eligible for indemnification payments.

(a) An indemnification payment for an animal may be paid only after the owner of the animal has applied for indemnification and the application has been approved in accordance with § 54.3. Indemnification payments may be paid only for the following:

(1) Total depopulation of flocks that were determined to be infected flocks or source flocks; or, at the discretion of APHIS based on epidemiologic investigation, depopulation of high-risk animals from infected flocks or source flocks; and,

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks.

(b) No indemnification payment shall be made for any application unless it is received in complete form on or before July 7, 1993. If at any time funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity are not sufficient to pay all owners whose indemnification applications have been approved by APHIS in accordance with § 54.3(b), available funds will be paid in chronological order based on the dates that applications are approved by APHIS until available indemnification funds have been exhausted.

(c) No indemnification payment shall be made for an animal if the owner of the animal fails to provide APHIS, within 30 days of request by an APHIS representative or State representative, with bills of sale, pedigree registration certificates issued by breed or registry associations, and all other records regarding movement of animals into and from the flock containing animals for which the owner has applied for indemnification.

(d) No indemnification payment shall be made for an animal acquired by the owner, other than through birth within the flock, during the 6 months prior to the date of receipt by APHIS of an application by the owner for indemnification, or to an owner who has been an owner of a flock for less than one year prior to the date of receipt by APHIS of an application by the owner for indemnification.

§ 54.3 Application by owners for indemnification payments.

(a) An owner must apply to receive indemnification by submitting to the Administrator a written request containing the following information about the owner and the flock containing animals for which the application to receive indemnification is made:

(1) Name, address, and social security number (optional) of the owner;

(2) Number, breed(s), sex, and any individual identification of animals in the flock;

(3) Address of the premises on which the flock is located;

(4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including:

(i) If an APHIS representative or State representative notified the owner that his or her flock was an infected flock or source flock, the date such notice was given and the name of the APHIS representative or State representative who gave the notice;

(ii) If the owner is aware of any diagnosis of scrapie made for animals in the flock, the date of the diagnosis, identification of any animals destroyed in the process of making such diagnosis, and the name of the person or organization who made the diagnosis;

(iii) Any signs of scrapie listed in § 79.2(a)(2) of this chapter that are observed in the flock by the owner; and

(iv) Any movement of animals into the owner's flock from infected flocks or source flocks; and

(5) Signed release letters addressed to any breed associations or registries that

maintain records of the owner's animals, authorizing the breed associations or registries to release to APHIS all records maintained by the breed associations or registries on animals currently or formerly owned by the owner.

(b) APHIS will evaluate each application to determine whether it is complete and includes the agreement required by § 54.4, and whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with § 54.2. APHIS will approve an application, and notify the applicant in writing of the date of approval, after determining that the application requests indemnification only for:

(1) Animals in a flock that has been determined to be an infected flock or a source flock, or

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks. Indemnity will be paid until available indemnification funds have been exhausted.

§ 54.4 Certification by owners.

Before any indemnification payment is made to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review, within 30 days of a request by an APHIS representative, all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part;

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage.

§ 54.5 Amount of indemnification payments.

Indemnity paid in accordance with § 54.2 shall be paid in the amount of $150 for each registered animal destroyed and $50 for each other animal destroyed.

§ 54.6 Procedures for destruction of animals.

(a) Animals for which indemnity is sought, other than animals destroyed for diagnostic testing, shall be destroyed on the premises where the animals are held, pastured, or penned at the time indemnity is approved; except that the animals may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative.

(b) The carcasses of animals destroyed in accordance with this section shall be disposed of by burial, incineration, or other disposal methods authorized by applicable State law.

(c) The destruction and disposition of animals destroyed in accordance with this section shall be performed in the presence of an APHIS representative.

Done in Washington, DC, this 3rd day of December, 1992.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-29897 Filed 12-8-92; 8:45 am]

BILLING CODE 3410-34-F

FEDERAL ELECTION COMMISSION

11 CFR Part 201

[Notice 1992-23]

Ex Parte Communications

AGENCY: Federal Election Commission.

ACTION: Interim rules, with request for comments.

SUMMARY: The Federal Election Commission is establishing procedures for handling communications made to Commissioner offices in connection with Commission audits, litigation, rulemaking proceedings and advisory opinions, by persons not employed by the Commission. These communications are prohibited, in the case of audits and litigation; and are to be made part of the public record, in the case of rulemaking proceedings and advisory opinions.

EFFECTIVE DATE: These interim rules are effective on December 9, 1992. The Commission will accept comments on these rules received on or before January 8, 1993, and may re-evaluate them in light of these comments.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is establishing procedures for handling ex parte communications made in connection with Commission audits, litigation, rulemaking proceedings and the advisory opinion process. These new rules complement those found at 11 CFR 7.15 and 111.22, which prohibit these communications in connection with Commission enforcement actions.

The Commission anticipates that there will be future revisions to the Standard of Conduct rules that could change the 11 CFR 7.15 citation. Any such change will be reflected in the final publication of these rules.

The interim rules prohibit ex parte communications made in connection with ongoing Commission audits and litigation. These communications are permitted in the case of rulemaking proceedings and advisory opinions, but are to be made part of the public record.

The new rules apply to Commissioners, Special Deputies of ex officio Commissioners, and all individuals serving under their personal supervision. The Commission also plans to consider recommendations for internal guidelines in this area for other Commission employees.

Audits and Litigation

The ban on ex parte communications in connection with Commission audits and litigation is necessary to avoid the possibility of prejudice, real or apparent, to the public interest in these activities. The new and former rules interrelate so that, if an audit or enforcement matter leads to litigation, the ban on ex parte communications extends from the start of the audit or enforcement action through the conclusion of any related litigation. The ban applies to both written and oral communications.

The Commission is required to audit the records of any presidential campaign that receives payments from the Presidential Election Campaign Fund. 26 U.S.C. 9007(a), 9009(b), 9038(a), 9039(b). If a party receives funding for its presidential nominating convention, the Commission is required to audit the records of the party's convention committee. The Commission is also required to audit the records of all convention host committees. 26 U.S.C. 9008 (g) and (h), 11 CFR 9008.9.

In addition, the Commission is authorized at 2 U.S.C. 438(b), under its general administrative authority, to conduct audits for cause of any political committee that is required to file campaign finance reports under the Federal Election Campaign Act's general reporting requirement, 2 U.S.C. 434.

The prohibition on ex parte contacts in connection with a Commission audit covers different time periods, depending on which type of audit is involved, to

reflect the different procedures followed in each instance.

In the case of an audit of a presidential campaign committee, a convention committee or host committee, the prohibition on ex parte communications begins when the Commission sends a letter to the committee asking that it make a pre-inventory check of its records prior to the commencement of audit fieldwork by the Commission. Commissioners' offices will be provided with contemporaneous copies of these letters.

The prohibition on audits of all publicly funded committees extends until the end of the audit process. This occurs when the Commission issues a final audit report ("FAR"), if the report does not contain a repayment determination. If the FAR contains a repayment determination, the process ends when the United States Treasury receives the final repayment check from the committee, or when the Commission authorizes suit to pursue the repayment.

In addition, the Commission invites comments on whether broader ex parte rules should be adopted that would apply from the time a candidate or committee seeks eligibility to receive matching federal funds. The Commission is seeking comments on three possible approaches: (1) A ban on ex parte communications, but only while a candidate or committee's eligibility was being determined, or during other Commission determinations pursuant to 11 CFR 9033.10; (2) a ban throughout the public funding process, i.e., from the date the candidate or committee seeks eligibility through the end of the audit process; or (3) permitting ex parte communications from the time the candidate or committee seeks eligibility through the end of the audit process, but requiring public disclosure of such contacts: (a) While eligibility was being determined, or during other Commission determinations pursuant to 11 CFR 9033.10, or (b) throughout the public funding process. The Commission also welcomes comments on any other way to deal with this situation.

When an audit is conducted pursuant to 2 U.S.C. 438(b), the prohibition takes effect when the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, and extends until the Commission publicly issues the final audit report. If the matter is referred to the Office of General Counsel and there is reason to believe that a violation has occurred, the prohibition on ex parte communications made in connection with an enforcement matter, found at 11 CFR 111.22, becomes applicable.

The prohibition involving litigation takes effect with the Commission's authorization to file suit, in the case of offensive litigation; or at the time a suit is filed against the Commission, in the case of defensive litigation. It extends through the conclusion of the litigation, that is, the date on which a judgment is entered which cannot be appealed, or on which the deadline for appealing a judgment expires.

The rules state that a Commissioner or member of a Commissioner's staff who receives a prohibited communication shall attempt to prevent the communication. If the Commissioner or staff member is unsuccessful in preventing the communication, he or she shall advise the person making the communication that it will not be considered. In addition, if unable to prevent the communication, he or she shall prepare a statement setting forth the substance and circumstances of the communication no later than 48 hours after its receipt, or prior to the next Commission discussion of the matter, whichever is earlier, and deliver this statement to the Designated Agency Ethics Official for placement in the file of the litigation case or audit. A copy of written comments must be filed with the Designated Agency Ethics Official within the same timeframe. (This is similar to the Commission's existing rules regarding enforcement matters.)

Rulemaking Proceedings and Advisory Opinion Requests

The Commission encourages members of the public to state their views on rulemakings and advisory opinion requests in writing, during the public comment period on each such matter. Communications prior to the start of a rulemaking proceeding or the receipt of an advisory opinion request are also welcome. Communications made after the rulemaking or advisory opinion process has started are permitted, but these must be made public so that all persons will have equal notice of the information before the Commission.

A Commissioner or member of a Commissioner's staff who receives written comments on a rulemaking or advisory opinion once the rulemaking or advisory opinion process has started shall transmit the communication to the Commission Secretary no later than 48 hours after receipt, or prior to the next Commission discussion of the matter, whichever is earlier, to be made part of the public record. If a Commissioner or member of a Commissioner's staff has a discussion that would qualify as an ex parte communication regarding a rulemaking proceeding or advisory opinion during the pertinent time period established by these rules, the Commissioner or staff member shall, no later than 48 hours after the conversation or prior to the next Commission discussion of the matter, whichever is earlier, summarize the conversation in writing and transmit this summary to the Commission Secretary, who shall make it part of the public record.

For advisory opinions, the pertinent period begins when a request for an advisory opinion is circulated to Commissioners' offices and extends through the date the opinion is issued. The restrictions also apply during any reconsideration of an advisory opinion, and any discussion of reconsideration.

For rulemaking proceedings, the period begins on the date a proposal for rulemaking is circulated to Commissioners' offices, or the date on which a rulemaking petition is received. It extends through the conclusion of the rulemaking. This can occur at different times, depending on the course of a particular rulemaking: E.g., when a rulemaking petition is denied; when the reconsideration process regarding a petition is concluded; when final rules are approved and transmitted to Congress; or when the Commission concludes its consideration of any action relating to proposed or actual congressional disapproval of a pending rule.

Exceptions

The rules contain an exception for communications limited to the procedural status of a pending matter, where the communication is not made for the purpose of influencing a decision, does not address the substance or merits of a matter before the Commission, and does not tend to have an effect on Commission consideration of the matter. Commissioners or their staff who receive status inquiries regarding audit or litigation matters shall direct the inquiries to the appropriate Commission staff.

Also, Commissioners and other covered personnel making public appearances may express their views either spontaneously or in response to inquiries from members of the audience at such appearances on a subject involved in a pending rulemaking or advisory opinion request, without triggering these requirements.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached interim regulations will not have a significant economic impact

on a substantial number of small entities. The basis for this certification is that no small entities are impacted under these rules.

List of Subjects in 11 CFR Part 201

Administrative practice and procedure.

For the reasons set out in the preamble, subchapter B, chapter I of title 11 of the Code of Federal Regulations is amended by adding new part 201 as follows:

PART 201—EX PARTE COMMUNICATIONS

Sec.
201.1 Purpose and scope.
201.2 Definitions.
201.3 Audits and litigation.
201.4 Rulemaking proceedings and advisory opinions.

Authority: 2 U.S.C. 437d(a)(8), 437f, 438(a)(8), 438(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, 9039(b).

§ 201.1 Purpose and scope.

This part prescribes procedures for handling ex parte communications made in connection with Commission audits, litigation, rulemaking proceedings and the advisory opinion process. Rules governing such communications made in connection with Commission enforcement actions are found at 11 CFR 111.22, while provisions setting forth employee responsibilities under the Commission's Standards of Conduct rules are found at 11 CFR 7.15.

§ 201.2 Definitions.

As used in this part:

(a) *Ex parte communication* means:

(1) For purposes of 11 CFR 201.3, any written or oral communication between a Commissioner or a member of a Commissioner's staff and any person outside the agency concerning any audit or litigation case pending before the Commission, other than a communication limited to a discussion of the procedural status of an audit or litigation case and not made for the purpose of influencing or tending to have an effect on the Commission's consideration of the matter; and

(2) For purposes of 11 CFR 201.4, any oral or written communication between a Commissioner or a member of a Commissioner's staff and any person outside the agency, not on the public record, regarding a pending rulemaking proceeding or advisory opinion request, other than a communication limited to a discussion of the procedural status of a pending rulemaking proceeding or advisory opinion request, and not made for the purpose of influencing or tending to have an effect on the Commission's consideration of the matter.

(b) *Commissioner* means an individual appointed by the President to the Federal Election Commission pursuant to 2 U.S.C. 437c(a), and also means the Secretary of the Senate, the Clerk of the House, or their Special Deputies or other designees, ex officio.

(c) *Commissioner's staff* means all individuals working under the personal supervision of a Commissioner including executive assistants, executive secretaries, and assistants to Special Deputies of ex officio Commissioners.

§ 201.3 Audits and litigation.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in audits undertaken by the Commission, and in any litigation to which the Commission is a party, no person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication regarding any audit or litigation matter, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The requirements of this section apply:

(1) In the case of an audit undertaken pursuant to 26 U.S.C. 9007(a) and (b), 9008(g) and (h), or 9038(a) and (b), from the date of the Commission's letter to a presidential campaign committee, a convention committee, or a host committee asking that it make a pre-inventory check of its records, prior to the commencement of audit fieldwork by the Commission, through the end of the audit process;

(2) In the case of an audit undertaken pursuant to 2 U.S.C. 438(b), from the date the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, until the Commission publicly issues the final audit report; and

(3) In the case of litigation, from the date on which the Commission authorizes a suit to be filed, or on which a suit is filed against the Commission, through the conclusion of the litigation.

(c)(1) A Commissioner or member of a Commissioner's staff who receives an oral ex parte communication concerning any audit or litigation pending before the Commission during the period described in paragraph (b) of this section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or staff member shall advise the person making the communication that he or she will not consider the communication and shall, no later than 48 hours after receipt of the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication and deliver the statement to the Designated Agency Ethics Official for placement in the file of the audit or litigation case.

(2) A Commissioner or member of a Commissioner's staff who receives a written ex parte communication concerning any audit or litigation pending before the Commission during the period described in paragraph (b) of this section shall, no later than 48 hours after receipt of the communication or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Designated Agency Ethics Official for placement in the file of the audit or litigation case.

(3) A Commissioner or member of a Commissioner's staff who receives a request for the procedural status of an audit or litigation case shall direct the inquiry to the appropriate Commission staff.

§ 201.4 Rulemaking proceedings and advisory opinions.

(a) Except as provided in paragraph (c) of this section, a Commissioner or member of a Commissioner's staff who receives or makes an ex parte communication concerning any rulemaking or advisory opinion during the period described in paragraph (b) of this section shall, no later than 48 hours after the communication or prior to the next Commission discussion of the matter, whichever is earlier, provide a copy of a written communication or a written summary of an oral communication to the Commission Secretary for placement in the public file of the rulemaking or advisory opinion. The Commissioner or staff member shall advise any person making or receiving an oral communication that a written summary of the conversation will be made part of the public record.

(b) The requirements of paragraph (a) of this section apply:

(1) In the case of a rulemaking proceeding, from the date on which a proposal for rulemaking is circulated to Commissioners' offices, or a rulemaking petition is received by the Commission, through the conclusion of the rulemaking; and

(2) In the case of an advisory opinion, from the date a request for an advisory opinion is circulated to Commissioners'

offices through the date on which the advisory opinion is issued, and during any period of reconsideration pursuant to 11 CFR 112.6.

(c) Commissioners and other covered personnel making public appearances may express their views either spontaneously or in response to inquiries from members of the audience at such appearances on a subject involved in a pending rulemaking or advisory opinion request, without triggering these requirements.

Dated: December 4, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-29842 Filed 12-8-92; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: The FDIC is hereby amending its regulations on securities of nonmember insured banks. The amendments are necessary to correct various errors and omissions which appear in the Code of Federal Regulations. These regulations are applicable to nonmember FDIC insured banks with a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: M. Eric Dohm, Staff Accountant, Division of Supervision (202-898-8921) or Gerald J. Gervino, Senior Attorney, Legal Division (202-898-3723).

SUPPLEMENTARY INFORMATION: This document amends Part 335 to eliminate inadvertent typos and other errors which occurred in the last three amendments to the regulation (48 FR 55553, 54 FR 53571, and 57 FR 4699).

List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential Business information, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, part 335 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78*l*(i)).

§ 335.102 [Amended]

2. In § 335.102:

a. Paragraph (r)(2), the reference "paragraph (l)(1)" is revised to read "paragraph (r)(1)"; and

b. Paragraph (nn)(2)(ii)(C) is amended by revising the first occurrence of "is" to read "in".

§ 335.203 [Amended]

3. In section 335.203, paragraph (c) is amended by revising the words "10 days" to read "20 days".

§ 335.212 [Amended]

4. In section 335.212, in form F-5, under the heading "Information Required in Statement":

1. In item 6:

i. Under the heading "Instructions to Paragraph (e) of Item 6", instruction 4. is amended by revising the reference "paragraph (b)" to read "paragraph (e)"; and

ii. Paragraph (i) is removed;

b. In item 7:

i. Paragraph (b)(2) is amended by revising the reference "paragraph (b)(1)(vi)" to read "paragraph (b)(1)(iv)"; and

ii. Instruction 1. to paragraph (g) is amended by revising "instruction (b)(1) to item 7(a)" to read "General Instructions to Paragraphs (a) through (e) of item 7";

c. Item 8 is amended by revising the reference "item 15" to read "item 13" in the introductory paragraph, and removing paragraph (f);

d. Item 9 is amended by removing paragraphs (c), (d), (e), (f), and the instructions 1. through 3. to paragraph (f);

e. In item 12:

i. Paragraph (a)(3)(vi) is amended by revising the reference "(Form F-1, Item 14)" to read "(Form F-1, item 13)", and the reference "in accordance with the provisions of paragraph (b)(1)" to read "required by Item 14(b)(1) of the SEC's Schedule 14A (17 CFR 240.14a-101)";

ii. Paragraph (b)(1) is amended by revising the reference "item 1 of this Form F-5" to read "item 1 of Form F-2 (§ 335.312 of this part)";

iii. Paragraph (b)(2) is amended by revising the reference "Item 3 of this Form F-5" to read "item 2 of Form F-2 (§ 335.312 of this part)";

iv. Paragraph (b)(9) is amended by revising "Item 8 of this Form F-5, changes in and disagreements with accountants on accounting and financial disclosure" to read "Items 4, 5, 6, 7 and 8 of this Form F-5";

v. Paragraph (c)(4) is amended by revising the reference "Item 8 of this Form F-5" to read "items 4, 5, 6, 7 and 8 of this Form F-5"; and

vi. Instructions to item 12, instruction 3. is amended by revising the words "the information regarding the other persons is required by this Item," to read "the information regarding the other persons that is required by this item,"; and

f. Under the heading "Option Disclosure Instruction", by revising the words "instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c)" to read "item 9(a)(3)" in the first sentence of the first paragraph, and by revising the words "directors and" to read "principal" each place they appear in the second paragraph, the heading of the last column in the table, and footnote 2 to the table.

§ 335.309a [Amended]

5. In section 335.309a, in form F-1, item 2, instruction 6. is amended by revising the reference "instructions 5(a), (b) and (c) to this item 2" to read "instructions 7, 8, 9, 10, and 11 to this item 2".

§ 335.312 [Amended]

6. In section 335.312, in form F-2, part III, item 9, is amended by redesignating paragraph (d) as paragraph (c).

§ 335.331 [Amended]

7. In section 335.331, in form F-4, item 2, the first sentence is amended by revising the reference "in (1) and (2) below" to read "in (c)(1) and (c)(2) of item 1 of this Form F-4".

§ 335.401 [Amended]

8. In section 335.401, paragraph (b)(1) introductory text is amended by revising the words "six copies" to read "three copies" and paragraph (b)(2) is amended by revising the words "Six copies" to read "Three copies".

§§ 335.413 and 335.414 [Removed]

9. Sections 335.413 and 335.414 are removed.

§ 335.627 [Amended]

10. Section 335.627 is amended:

a. By moving the heading "D. Schedules (Format F-9D)" from immediately following paragraph 14. under "B. Statement of Income", and placing it immediately following paragraph 11. under "C. Statement of Changes in Equity Capital"; and

b. Under "D. Schedules", in schedule II, second paragraph of footnote 1, by removing the words "as defined in item 9(a) of Format F-9A, Balance Sheet".

§ 335.628 [Amended]

11. In section 335.628:

a. Under "I. Presentation Requirements":

i. Paragraph (a)(1) is amended by inserting a comma after the word "required" and by removing the reference "by § 335.623";

ii. Paragraph (a)(2) is amended by revising the words "filed pursuant to § 335.628" to read "required to be filed"; and

b. Under "II. Preparation Requirements", in paragraphs (b)(6) and (c)(1), by removing the words "by § 335.623" in each place they appear in the text.

Dated: December 2, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-29723 Filed 12-8-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-8]

Establishment of Transition Area, Crystal River, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Crystal River, FL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Crystal River—Homosassa Air Terminal Airport. This action lowers the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for instrument flight rules (IFR) aeronautical operations. The operating status of the airport will change from visual flight rules (VFR) operations only to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On August 13, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Crystal River, FL Transition Area (57 FR 36378). A standard instrument approach procedure (SIAP) had been developed to serve the Crystal River—Homosassa Air Terminal Airport. The proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface to provide additional controlled airspace for IFR aeronautical operations. If approved, the operating status of the airport would change from VFR only to include IFR operations concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. An objection to the proposal was received from the State of Florida Department of Transportation based on surface conditions at the airport. This objection was subsequently withdrawn. Transition Areas are published in § 71.181 of FAA Order 7400.7. A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. The Transition Area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Crystal River, FL Transition Area. A standard instrument approach procedure has been developed to serve the Crystal River-Homosassa Air Terminal Airport. The floor of controlled airspace will be lowered from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for IFR aeronautical operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ASO FL TA Crystal River, FL [NEW]

Crystal River, Crystal River-Homosassa Air Terminal Airport FL (lat. 28°52'04"N, long. 82°34'28"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Crystal River-Homosassa Air Terminal Airport.

* * * * *

Issued in East Point, Georgia, on November 9, 1992.

James G. Walters,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 92-29888 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASO-11]

Revision of Transition Area, Elkin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Elkin, NC Transition Area. The existing 700-foot transition area is centered on the Elkin Municipal Airport and partially overlies the Swan Creek Airport located approximately 6.1 miles south. This action excludes the area

within a 2.5-mile radius of the Swan Creek Airport from the Elkin Transition Area to avoid unnecessarily restricting aircraft in the traffic pattern and local training flights. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83.

EFFECTIVE DATE: 0901 u.t.c., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On August 28, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Elkin, NC Transition Area (57 FR 39157). The proposed action would exclude the airspace within a 2.5-mile radius of the Swan Creek Airport from the transition area. This proposed action was taken at the request of the Swan Creek Airport manager in order to minimize impact on local aircraft operations and to aircraft operating in the traffic pattern. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. An objection to the proposal was received from the Town Manager, Elkin, NC. The objection was based on the concern voiced by pilots flying into the Elkin Airport above the close proximity of the sail planes on their let down to the airport. It is noted that sail planes currently operate in the vicinity. Also, it is noted that airspace involved has no impact on arriving aircraft operating according to instrument flight rules (IFR). Transition Areas are published in § 71.181 of FAA Order 7400.7A dated November 27, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. The Transition Area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Elkin, NC Transition Area by excluding that portion of the transition area within a 2 5-mile radius of the Swan Creek Airport. This action is taken to avoid unnecessarily restricting aircraft in the traffic pattern and local training flights at the Swan Creek Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them opertionally current. *It, therefore,* (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

Elkin NC TA Elkin, NC [Revised]
ASO NC TA Elkin, NC
Elkin Municipal Airport, NC (lat. 36°16′48″N, long. 80°47′11″W)
Swan Creek Airport (lat. 36°12′08″N, long. 80°52′05″W)
Zephyr NDB (lat. 36°18′47″N, long. 80°43′24″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Elkin Municipal Airport and within 2.7 miles each side of the 057° bearing from the Zephyr NDB, extending from the 6.3-mile radius to 7 miles northeast of the NDB, excluding that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on October 29, 1992.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92–29889 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–10]

Revision of Transition Area, Wilkesboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Wilkesboro, NC Transition Area. The existing 700-foot transition area is centered on the Wilkes County Airport and overlies the Swan Creek Airport located approximately 11 miles east. This action excludes the airspace within a 2.5-mile radius of the airport from the transition area to avoid unnecessarily restricting aircraft in the traffic pattern and local training flights. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83.

EFFECTIVE DATE: 0901 u.t.c., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On August 28, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Wilkesboro, NC Transition Area (57 FR 39156). The proposed action would exclude the airspace in vicinity of the Swan Creek Airport from the transition area. This action was proposed at the request of the airport manager in order to avoid restricting aircraft in the traffic pattern and local training flights. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Transition Areas are published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR

71.1. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. The Transition Area listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Wilkesboro, NC Transition Area by excluding the airspace within a 2.5-mile radius of the Swan Creek Airport. This action will avoid unnecessarily restricting aircraft in the Swan Creek Airport traffic pattern and local training flights.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ASO NC TA Wilkesboro, NC [Revised]

Wilkesboro, Wilkesboro County Airport, NC (lat. 36°13'21"N, long. 81°05'55"W)
Swan Creek Airport (lat. 36°12'08"N, long. 80°52'05"W)
Wilki NDB (lat. 36°06'46"N, long. 81°05'53"W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Wilkes County Airport and within 3 miles each side of the Runway 1 localizer course, extending from the 11-mile radius to 8 miles south of the Wilki NDB; excluding that airspace with the West Jefferson, NC and Elkin, NC, Transition Areas, and that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on October 26, 1992.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 92–29890 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R–92–1530; FR–2880–N–04]

Notice to Reopen Comment Period for Interim Rule for Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice to reopen comment period for interim rule.

SUMMARY: The Department of Housing and Urban Development (HUD) is reopening the comment period for the interim rule entitled Community Development Block Grants for Indian Tribes and Alaskan Native Villages. Since the rating and ranking process for the competition of FY 1991 and 1992 funds has not yet been completed by all offices for the Notice of Fund Availability that was published simultaneously with the interim rule, the Department has decided to reopen the comment period for the rule. This will allow all tribes to have a chance to provide suggestions for modifications of the regulation before it is issued in final form.

DATES: Effective date: June 8, 1992. Comment due date: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, Assistant Director for the Indian Community Development Block Grant Program, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of HUD, room 7184, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1322. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: On April 7, 1992 HUD published an interim rule entitled Community Development Block Grants for Indian Tribes and Alaskan Native Villages (57 FR 11832), and a Notice of Fund Availability (57 FR 11852) announcing the availability of funds for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Years 1991 and 1992. The interim rule's comment due date of November 18, 1992 was predicated on allowing tribes to comment on the April 7 interim rule after the competition for FY 1991 and 1992 funds was completed. Since all of the offices have not yet completed the rating and ranking process for FY 1991 and 1992 funds, HUD has decided to reopen the comment period on the interim rule and accept comments until January 29, 1993 in order to allow all tribes to have a chance to provide suggestions for modification of the regulation before it is issued in final form. No additional extensions of time for comments on the interim rule are anticipated.

Dated: December 2, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–29803 Filed 12–8–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Fish and Wildlife Resources

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to

the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed revisions to Kentucky Administrative Regulations (KAR) at 405 KAR 8:030, 8:040, 16:180 and 18:180. These revisions establish fish and wildlife information and planning requirements for permit applicants and related protection standards for coal mining operations.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Amendment

By letter dated March 13, 1992 (Administrative Record No. KY-1119), Kentucky submitted proposed regulations to revise 405 KAR 8:030, 8:040, 16:180 and 18:180—the regulations governing fish and wildlife resource protection and enhancement by surface coal mining operations. This submittal was preceded by an earlier submittal on June 28, 1991, which was withdrawn (Administrative Record No. KY-1059). These proposed revisions were undertaken in response to the promulgation of revised Federal rules concerning the same subject matter in the December 11, 1987, **Federal Register** (52 FR 47359).

OSM announced receipt of the proposed amendment in the April 23, 1992, **Federal Register** (57 FR 14818), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 8, 1992.

By letter dated July 21, 1992 (Administrative Record No. KY-1167), Kentucky revised the proposed program amendment in response to changes made during its promulgation process. OSM announced receipt of the revised amendment in the September 23, 1992, **Federal Register** (57 FR 43946), and in the same notice, reopened the public comment period and provided an opportunity for a public hearing. The public comment period closed on October 8, 1992.

III. Director's Findings

Set forth below pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Kentucky program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

The proposed amendment consists of three parts: Fish and wildlife resources information (405 KAR 8:030(20); Mining and Reclamation Plan (MRP); fish and wildlife protection and enhancement (405 KAR 8:030(36)); and protection of fish, wildlife, and related environmental values (405 KAR 16:180(1) through (3)). The above proposed amendments govern surface mining activities. Substantively identical changes are also proposed at 405 KAR 8:040(20), 405 KAR 8:040(36), and 405 KAR 18:180 (1) through (3) for underground mining activities. OSM will discuss the proposed changes to the rules governing surface mining activities with the understanding that such discussion also applies to the proposed changes to the rules governing underground mining activities.

1. Fish and wildlife resource information (405 KAR 8:030(20))

Kentucky proposes to amend 405 KAR 8:030(20) to require that each permit application include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information will be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of Interior, Fish and Wildlife Service. Site-specific resource information will be required when the permit area or adjacent area is likely to include listed or proposed endangered or threatened species of plants or animals or their critical habitats, habitats of unusually high value, and other species or habitat identified through agency consultation as requiring special protection under State or Federal law. The proposed rule also contains a provision which provides for the Cabinet to send, upon request, fish and wildlife resource information to the U.S. Department of Interior, Fish and Wildlife Service for their review.

The above proposed parts of the amendment are substantively identical to 30 CFR 780.16 (a) and (c). Accordingly, the Director finds that the described provisions are no less effective than the Federal rules.

Kentucky has proposed several provisions for which there are no Federal counterparts. Under proposed 405 KAR 8:030(20)(3), Kentucky includes language which requires that wetland delineations be conducted in accordance with the Corps of Engineers Wetlands Delineation Manual. Kentucky also proposes rules at 405 KAR 8:030(20)(4) which determine when fish and wildlife resource information is required as part of permit amendments and revisions. The Director finds that these proposed provisions complement and clarify the other previously discussed sections of the proposed rule and that they are not inconsistent with the requirements of SMCRA and the Federal regulations.

Proposed paragraph (6) of 405 KAR 8:030(20) requires fish and wildlife resource information to be included in applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992. The Director believes this is a reasonable time period to implement the proposed rule in light of the site-specific data collection requirements which it will impose on some permit applicants. He therefore finds that 405 KAR 8:030(20)(6) is not inconsistent with SMCRA and the Federal rules.

2. MRP; fish and wildlife protection and enhancement (405 KAR 8:030(36))

Under proposed 405 KAR 8:030(36), Kentucky will require each permit application to include a description of how the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values and how enhancement of these values will be achieved where practicable. The description must, at a minimum, apply to species and habitats identified under 405 KAR 8:030(20) and include both protective and enhancement measures. Where no enhancement measures are planned, a statement must be provided explaining why enhancement is not practicable. This description of protection and enhancement measures

must, upon request, be provided to the U.S. Department of Interior, Fish and Wildlife Service for their review.

These provisions are substantively identical to the Federal rules at 30 CFR 780.16 (b) and (c) with one exception. The exception is that they do not require the protection and enhancement measures to be consistent with the performance standards for the protection of fish, wildlife and related environmental values. That is, there is nothing in the proposal which corresponds to 30 CFR 780.16(b)(1). The Director, however, believes that Kentucky will act responsibly and implement the provisions in such a manner that there will be no inconsistencies between what is required under the proposed permitting and performance rules. He therefore finds that the described provisions are no less effective than 30 CFR 780.16 (b) and (c).

Kentucky has proposed rules that identify when fish and wildlife protection and enhancement plans will be required as part of applications for permit amendments and revisions. November 17, 1992, is also proposed as the date when 405 KAR 8:030(36) becomes applicable to new applications for permits, amendments and revisions. There are no Federal counterparts to these provisions. OSM believes these provisions complement and clarify the meaning of the rule and that the November 17, 1992, date for implementation is reasonable in light of the planning requirements which the proposed rules place upon permittees. He therefore finds that these provisions are not inconsistent with the requirements of SMCRA and the Federal rules.

3. Protection of fish, wildlife, and related environmental values (405 KAR 16:180 (1) through (3))

In 405 KAR 16:180(l)(1), Kentucky proposes general requirements for the protection of fish, wildlife, and related environmental values. The permittee is required to the extent possible using the best technology currently available to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of those resources where practicable. This provision is substantively identical to section 515(b)(24) of SMCRA and no less effective than 30 CFR 816.97(a). Proposed paragraph (2) of section (1) lists specific actions which the permittee must take to protect fish, wildlife, and related environmental values. This listing which includes such things as the design and construction of powerlines to minimize electrocution hazards to raptors is substantively identical to the list in 30 CFR 816.97 (e) and (f). For these reasons, the Director finds that proposed 405 KAR 16:180(l) is no less effective than the Federal rules and is not inconsistent with section 515(b)(24) of SMCRA.

Proposed 405 KAR 16:180(2) sets forth protection standards for bald and golden eagles and other endangered or threatened species. It is substantively identical to 30 CFR 816.97(b) through (d). The Director therefore finds that 405 KAR 16:180(2) is no less effective than the Federal rules.

Proposed 405 KAR 16:180(3) sets forth reclamation strategies and wildlife enhancement techniques. Where fish and wildlife is to be the postmining land use, the permittee must select species and planting arrangements based on their usefulness in supporting wildlife. Where croplands are the intended postmining land use, the permittee must avoid when possible, large blocks of monoculture by interspersing fields with trees, hedges, or fence rows. These and other provisions in the proposed section are substantively identical to those at 30 CFR 816.97 (g) through (i). The Director therefore finds that they are no less effective than the Federal rules.

IV. Summary and Disposition of Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. Substantive comments were received from the Kentucky Resources Council (KRC), USDA Soil Conservation Service (SCS) and the Sport Fishing Institute KRC expressed frustration with the length of time it has taken for Kentucky to promulgate their proposed fish and wildlife rules and listed four areas of general concern regarding their implementation.

1. KRC questioned whether both State and Federal fish and wildlife agencies will have the resources to conduct the individual permit reviews necessary to properly consult on the scope of data collection and design of fish and wildlife mitigation plans. During the promulgation of both Federal and State rules, comments were solicited from both Federal and State fish and wildlife agencies. Neither agency expressed an inability to be able to provide sufficient resources to implement the proposed rules. The Director therefore believes that these agencies are committed to their responsibilities under the proposal and will make the necessary resources available to properly implement it.

2. KRC questioned whether Kentucky has or will establish any process for formal consultation that will properly consider the opinions of the U.S. Department of Interior, Fish and Wildlife Service (USFWS) and, to a lesser extent, the Kentucky Department of Fish and Wildlife Resources (KYFWR). Kentucky has indicated that it expects to develop written procedures for consultation with these agencies (Administrative Record No. KY–1158). The Kentucky Department for Surface Mining Reclamation and Enforcement (KYDSMRE) is now working with the KYFWR to develop a memorandum of understanding which will include consultation procedures. The Director assumes that Kentucky will act in good faith and in a responsible manner when considering the comments of the USFWS and KYFWR.

3. KRC stated that it must be made clear that Kentucky has a mandatory obligation to require site-specific resource information in permit applications when the permit area or adjacent area is likely to include endangered or threatened species. The Director believes that proposed 405 KAR 8:030(20)(2)(a) and 405 KAR 8:040(20)(2)(a) have done what KRC has requested.

4. KRC questioned whether consultation will occur on a case-by-case basis and whether any formal memoranda for transmittal of files, review, and coordination of comments has been developed between Kentucky and the State and Federal wildlife agencies. Kentucky has indicated that written procedures for consultation will be developed and that consultation will occur on a case-by-case basis in accordance with these procedures (Administrative Record No. KY–1158).

KRC requested clarification on whether Kentucky interpreted the list of protection and enhancement measures given in proposed 405 KAR 8:030(36) (2)(b) and (2)(c) as limiting in nature or might other measures not specifically mentioned such as biological monitoring be imposed. Furthermore, KRC wanted to know what criteria would be used to select other measures beyond those that are enumerated. Kentucky has stated that it views the list contained in the proposed rule as examples of effective measures that should be considered by permit applicants and that may be required in appropriate circumstances (Administrative Record No. KY–1161). The list is not intended to limit the measures which might be applied. The Director accepts this explanation as consistent with the intent of the Federal rules. He believes that it is not necessary

to identify criteria under which measures would be selected beyond those that are enumerated in the proposed rule. If the measures given as examples are not effective in achieving protection and enhancement, then other measures must be devised by the permittee or the regulatory authority which will accomplish the intent of the fish and wildlife regulations.

KRC requested clarification as to whether protection and enhancement measures would be limited to critical species and habitats. The Director and Kentucky have both recognized that the protection and enhancement measures are not limited to critical species and habitats. This position is consistent with section 515(b)(24) of SMCRA which applies to all species and habitats and is not limited to those which are critical. However, it is reasonable to assume that critical species and habitats will receive greater attention than those which are not critical.

KRC commented that proposed 405 KAR 8:030 (20) and (36) were far too lenient in the time lag before the regulation becomes effective and arbitrary in selection of those circumstances in which submittal of site-specific or general information will be mandated. The Director disagrees. Under 30 CFR 732.17(a), any alteration of an approved State program is not enforceable until reviewed and approved by OSM. The proposed implementation date of November 17, 1992, is reasonable in light of the time required by OSM to review and act upon the proposed amendment. It also provides time for permittees to collect the necessary site-specific fish and wildlife resource information. Kentucky's proposed rule closely tracks the Federal rules. The Director believes that Kentucky will, through the consultation process with the USFWS and KYFWR, more clearly define the circumstances under which site-specific information will be required beyond what is present in the proposed rule.

KRC argued that the proposed rule is flawed because it limits the streams for which data must be collected to those for which existing data is available to establish the value of the stream. The Director disagrees. Federal rules at 30 CFR 780.16 require fish and wildlife information in all permit applications. Site-specific resource information is required when the permit area is likely to include listed or proposed endangered or threatened species of plants or animals or their critical habitats, habitats of unusually high value, and other species or habitats identified through agency consultation as requiring special protection under State or Federal law. There only needs to be a likelihood that these circumstances exist; not that existing data have already been collected as asserted by KRC. The proposed Kentucky rule is substantively identical to the Federal rule in this regard.

KRC commented that the proposed rule delays implementation of data collection for some areas and species such as wetlands and Federally protected species which the State is already obligated to protect under the Clean Water Act or endangered species laws. The Director agrees with KRC that SMCRA does not relieve operators of their obligations under existing environmental laws. Kentucky has not delayed the implementation of its proposed performance standards at 405 KAR 16:180. It has, however, delayed implementation of its proposed permitting information requirements until November 17, 1992. The Director, as previously discussed, has found that this timeframe is reasonable.

KRC commented that under proposed 405 KAR 030(20)(5)(a)(4) and 405 KAR 030(36)(4)(a)(4), a five acre boundary revision will require data submission; however, an operator could amend a permit to affect unlimited new acreage if smaller increments were used. There are no Federal counterparts to these proposed paragraphs. Kentucky has, in the proposed rule, established circumstances where fish and wildlife resource information and protection and enhancement plans would be required regardless of the size of the amendment or revision. In other situations, Kentucky has elected to make a case-by-case determination. This case-by-case determination would apply to permit revisions and amendments where the size of the area is less than five acres and does not involve a wetland, a new watershed where there is an important stream or a stream buffer zone. The Director has previously found this proposal is no less stringent than the minimum requirements of SMCRA.

KRC commented that the absence of a definition of "important stream" makes the proposed regulations fatally flawed. The Director disagrees. A definition is not required by the Federal rules. It is anticipated that Kentucky, in consultation with the USFWS and KYFWR, will define through technical memorandums or other guidance documents those values and characteristics which make a stream valuable and worthy of special protection. Such definitions need not appear in the proposed rules.

KRC commented that the proposed language is ambiguous with regard to the applicability date of the rule. Kentucky has revised this and other similar paragraphs in response to the commenter's comment. The Director believes that it is now clear that all applications for permits, amendments and revisions submitted on or after November 17, 1992, must meet the requirements of 405 KAR 8:030(20) and KAR 8:030(36).

KRC commented that Kentucky should be obligated to develop memoranda of understanding with State and Federal resource agencies in advance of November 17, 1992, in order to allow for orderly review and upgrading of existing permits to meet fish and wildlife requirements. Kentucky has a memorandum of understanding with the USFWS which was entered into in 1983. The Director anticipates that Kentucky and the USFWS will meet to revise this memoranda in light of the proposed rules. As previously stated, KYDSMRE and KYFWR are currently working on a memorandum of understanding which may be completed before November 17, 1992.

KRC commented that the limitation of the applicability to coal extraction areas in proposed 405 KAR 8:040 is too narrow and must be broadened to include any impacts from underground excavation or from surface facilities and support facilities that occur under an amendment or revision. Kentucky has asserted that the term "coal extraction area," which only appears in 405 KAR 8:040(20)(5)(a)(6) and 405 KAR 8:040(36)(4)(a)(6), is limiting only to these subparagraphs (Administrative Record No. KY-1158). These subparagraphs will require fish and wildlife resource information and protection and enhancement plans whenever an applicant for an amendment or revision proposes to extend the coal extraction area associated with an underground mine that may, by subsidence or other means, impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a State or Federal endangered or threatened species or its critical habitat. The Director is in agreement with Kentucky's explanation of the proposed language and sees no reason why it should be broadened.

KRC commented that the proposed rules are unclear as to whether fish and wildlife resource information will be required for all areas under which such information is required under Federal rules. Under 30 CFR 780.16(a), which applies to surface mines, fish and wildlife resource information is required for the permit area and adjacent area. The permit area is defined

at 30 CFR 701.5 as the area of land upon which an operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas. It must be the same area as covered by the performance bond. Adjacent area is defined at 30 CFR 701.5 as the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

For surface mining operations, Kentucky is proposing at 405 KAR 8:030(20)(1) to require fish and wildlife resource information for the permit area and adjacent area which is identical to the Federal rules. For underground mining operations, Kentucky is proposing at 405 KAR 8:40(20)(1) to require fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings including areas of probable subsidence. The Federal counterpart at 30 CFR 784.21(a) which applies to underground mining requires such information for the permit area and adjacent area. Kentucky requires the area above the underground workings to be included within the permit area whereas Federal rules do not.

KRC suggests that OSM seek assurance that the phrase "areas subject to probable impacts from underground workings" is not intended to raise the threshold of the definition of "adjacent area" to "probable impacts" rather than the Federal standards of "could reasonably be expected" to cause adverse impacts and that information will be gained from all areas adjacent to the permit area. The Director believes Kentucky has provided such assurance. In proposing the language used to describe the area for which fish and wildlife resource information will be required, Kentucky stated that it intended the requirements to be consistent with the Federal term "permit and adjacent area" (Administrative Record No. KY–1158). Furthermore, the Director interprets the phrase "areas subject to probable impacts" as equivalent to areas which could be reasonably expected to be adversely impacted.

In additional comments on this topic, KRC stated that it was unclear as to whether the phrase "area of surface operations and facilities" includes all disturbed areas such as roads and other aspects of surface activities not directly associated with coal removal or facilities. Under KRS 350.010, the term "operations" is defined to mean surface coal mining operations, all premises, facilities, roads and equipment used is the process of producing coal from a designated area or removing overburden or the activity to facilitate or accomplish the extraction or the removal of coal. Kentucky has indicated that it will apply this definition which includes roads and other aspects of surface activities when determining the area for which fish and wildlife resource information will be required under the proposed rules.

KRC objected to the use of the word "and" in proposed 405 KAR 16:180(3)(1)(b) because it suggested that edge must be created in all cases. KRC stated that the creation of habitat other than edge habitat should be given consideration. The Director agrees with the commenter that the creation of edge habitat may not be desirable in all circumstances. The proposed rule tracks 30 CFR 816.95(g)(3) which requires that plants used in reclamation be grouped and distributed to support and enhance fish and wildlife.

A reclamation strategy that does not optimize the edge effect would be acceptable if it were designed to support those species that do not require extensive development of edge habitat.

KRC argued that Kentucky has no authority to delay the implementation of performance standards in 405 KAR 16:180 and that such standards must become effective immediately. The Director agrees. Kentucky has revised 405 KAR 16:180 so that it will become effective immediately.

The SCS commented that the hydric soils list referenced in 405 KAR 8:030(20)(3) is actually a set of the individual county hydric soils lists and that the official hydric soils list for each county is maintained by the respective Soil Conservation Service field office in the Field Office's Technical Guide. In counties where soil surveys are being conducted or modernized, the hydric soils list is subject to revision. The Director thanks the SCS for providing this supplemental information that will be helpful in implementing the proposed rule.

The SFI stated that the proposed amendment was valuable to current conservation needs and expressed support for provisions requiring the use of the best technology currently available, notification of the Cabinet of any endangered or threatened species discovered in the permit area and the prohibition of mining that is likely to jeopardize the continued existence of endangered or threatened species. SFI expressed the belief that these requirements were adequate, appropriate and necessary.

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment submitted to OSM by Kentucky on March 13, 1992, and revised on July 21, 1992. The Director has determined that the amendment is no less stringent than SMCRA and consistent with regulations issued by the Secretary of Interior. The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory

impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

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

2. 30 CFR 917.15, is amended by adding a new paragraph (mm) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(mm) The following amendments to the Kentucky Administrative Regulations (KAR) as submitted to OSM on March 13, 1992, and revised on July 21, 1992, are approved effective December 9, 1992. The approved amendments pertain to fish and wildlife resources and consist of revisions to: 405 KAR 8:030(20), 405 KAR 8:030(36), 405 KAR 8:040(20), 405 KAR 8:040(36), 405 KAR 16:180(1)–(3), and 405 KAR 18:180(1)–(3).

[FR Doc. 92–29698 Filed 12–8–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–87]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This document implements 33 CFR 100.501 for the New Year's Eve Celebration Fireworks Display. The fireworks display will be launched from barges on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas from 8 p.m., December 31, 1992 to 1:00 a.m., January 1, 1993. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 8 p.m. December 31, 1992 until 1 a.m., on January 1, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 6 p.m. until 8 p.m., on January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 438–8559

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application requesting a permit to sponsor fireworks display on December 31, 1992 to take place from 8 p.m. until 1 a.m. on January 1, 1993. The fireworks display will be launched from barges anchored in the Elizabeth River off Town Point Park, Norfolk, Virginia, over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented to provide for the safety of life and property. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements

regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be open for commercial vessels.

Dated: November 23, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92-29749 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD1 92-127]

Temporary Drawbridge Operation Regulations; Saugatuck River, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Connecticut Department of Transportation (CONNDOT), the Coast Guard is issuing temporary regulations for the Route 136 Bridge over the Saugatuck River at mile 1.3 at Westport, Connecticut, to provide that the draw need not be opened for the passage of vessels for 105 days from 7 a.m., December 15, 1992 through 11 p.m., March 31, 1993. This temporary regulation is being issued to facilitate the reconstruction of the bridge before the boating season. This action will relieve the bridge owner of the burden of having to open the draw during the reconstruction and will only permit the transit of marine traffic which can pass under the bridge in the closed position.

DATES: This rule is effective from 7 a.m., December 15, 1992 through 11 p.m., March 31, 1993. Comments must be received on or before January 30, 1993.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The District Commander maintains the public docket for this rulemaking. Comments and other material referenced in this notice are part of this docket and will be available for inspection and copying at the above address. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Good cause exists for publication without notice and comment, and for making the rule effective in fewer than 30 days. The temporary final regulations are essential for the contractor to reconstruct the bridge prior to the 1993 boating season. Failure to reconstruct the bridge prior to the opening of the recreational boating season could result in substantial losses to maritime interests.

Request for Comments

The Coast Guard is, however, providing a post publication comment period to receive the views and comments of the public. Persons submitting comments should include their name and address, identify the bridge, this rulemaking (CGD1 92-127), the specific section of this rule to which each comment applies, and give reasons for concurrence or nonconcurrence with or any recommended changes to the rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period and will determine whether to revise these temporary regulations. The regulations may be changed in light of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager, listed under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

Discussion of Proposed Temporary Regulations

The Route 136 Bridge over the Saugatuck River at Westport, Connecticut, is a 107 year old swing bridge which has a vertical clearance of six feet above mean high water (MHW) and 13 feet above mean low water (MLW). A Coast Guard Bridge Permit (2-90-1), dated April 17, 1990 was issued to reconstruct the bridge on its present alignment. To facilitate the rehabilitation, a temporary bridge was authorized to accommodate vehicular traffic. Rehabilitation of the bridge involved conversion from lateral floorbeams to one utilizing longitudinal girders. The new longitudinal girders eliminated the additional vertical clearance between the lateral floorbeams of the previous design used by some marine interests. This reduction would substantially increase the number and frequency of the bridge openings and would have significant impact upon vehicular traffic. In April 1992, the Town of Westport and marine interests petitioned state court to enjoin CONNDOT from operating the rehabilitated bridge and from removing the temporary bridge utilized during bridge rehabilitation. The courts remanded the action to the Coast Guard for resolution.

Meetings with CONNDOT, Town of Westport, mariners and the Coast Guard regarding the concerns for rehabilitation of the bridge resulted in a proposal to raise the bridge structure two feet to increase the vertical clearance of the bridge. To accomplish this action in the shortest possible time without impacting the boating season, the proposed construction method requires the bridge to remain closed to maritime traffic for approximately three and a half months starting in December 1992. The swing span would be supported by the abutment on the west end and the rest pier on the east end while the center pier is raised and the turning machine is disconnected and remounted on a modified center pier. Although the bridge will be maintained in the closed position, it will provide a vertical clearance two feet greater than the existing closed clearance for a period not to exceed three and a half months. Based on the stage of construction, emergency openings may be able to be provided.

Review of bridge opening logs revealed that during December 1988, 1989 and 1990 there were two, one and no openings, respectively; and no requests for openings in January and February in 1989, 1990 and 1991. Additionally the upper reaches of the river can freeze during the winter.

Regulatory Evaluation

This rule is considered to be not major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a Regulatory Evaluation is unnecessary. This opinion

is based upon the fact that the closure will be accomplished outside the peak boating season when recreational boats are out of the water. The regulation will not prevent the passage of vessels which are able to pass under the elevated closed span.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For reasons given in the preceeding discussion section, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends, 33 CFR part 117, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.221 paragraph (c) is temporarily revised to read as follows:

§ 117.221 Saugatuck River.

* * * * *

(c) Repair of the Route 136 Bridge. Notwithstanding the provisions in paragraph (a) of this section, the draw of the Route 136 Bridge need not open for the passage of any vessel during repairs from 7 a.m., December 15, 1992, through 11 p.m., March 31, 1993, inclusive.

Dated: November 24, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–29751 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD, Regulation 92–05–30]

Safety Zone Regulation: Patapsco River Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the New Year's Eve Inner Harbor fireworks display in Baltimore. Fireworks will be launched from barges anchored approximately 600 feet south of Pier 6, Patapsco River, Inner Harbor, Baltimore Maryland. The safety zone is necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the event.

EFFECTIVE DATES: This regulation is effective from 11 p.m. December 31, 1992 to 1 a.m. January 1, 1993.

FOR FURTHER INFORMATION CONTACT: LT(jg) Mark Williams, U.S. Coast Guard Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5104.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures is not possible due to time of receipt of notice of intent to conduct a fireworks display. Specifically, the sponsor's application to hold the event was not received until November 3, 1992 leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting information

The drafters of this regulation are LT(jg) Mark Williams, project officer for the Captain of the Port, Baltimore, Maryland, and LCDR K.B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

On November 3, 1992 the Baltimore Office of Promotion submitted an application to hold a fireworks display on December 31, 1992. As part of its application, the Baltimore Office of Promotion requested the Coast Guard to provide assistance with control of spectator and commercial vessel traffic in the vicinity of the fireworks display.

Discusson of Regulations

The fireworks will be launched from a barge anchored approximately 600 feet south of Pier 6, Inner Harbor, Patapsco River, Baltimore, Maryland. This Safety Zone will consist of a circle, with a radius of 600 feet, around that barge. These regulations are necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of the Patapsco River during the fireworks event. Since the main shipping channel will not be closed and the regulation will only be in effect for a few hours, the impacts on routine navigation should be minimal.

This emergency rule is not considered major under Executive Order 12291 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact should be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Final Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T0585 is added to read as follows:

§ 165.T0585 Safety Zone: Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Location.* The following area is a safety zone: The waters of the Patapsco River, Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39–17–00 North, longitude 076–36–15 West.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office Baltimore, Maryland. (1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective time of the safety zone. (1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Effective date.* The regulation in this section is effective from 11 p.m. December 31, 1992 to 1 a.m. January 1, 1993, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: December 1, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–29753 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300245A; FRL–4054–9]

RIN 2070–AB78

Pesticide Tolerances for 1,4-Butanediol-Methylenebis(4-Phenylisocyanate)-Poly(Tetramethylene Glycol) Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of 1,4-butanediol-methylenebis(4-phenylisocyanate)-poly(tetramethylene glycol) copolymer (CAS Reg. No. 9018-04-6) when used as an inert ingredient (solid diluent; carrier) in pesticide formulations applied to animals. This regulation was requested by the Fermenta Animal Health Co.

EFFECTIVE DATE: This regulation becomes effective December 9, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300245A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H 7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5180.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 6, 1992 (57 FR 8106), EPA issued a proposed rule that gave notice that the Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(e) to establish an exemption from the requirement of a tolerance for residues of 1,4-butanediol-methylenebis(4-phenylisocyanate)-poly(tetramethylene glycol) copolymer (CAS Reg. No. 9018-04-6) when used as an inert ingredient (solid diluent; carrier) in pesticide formulations applied to animals.

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

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the

requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

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

Dated: November 10, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
1,4-Butanediol-methylenebis(4-phenylisocyanate)-poly(tetramethylene glycol) copolymer (CAS Reg. No. 9018-04-6); minimum molecular weight 158,000.	.....	Solid diluent; carrier.
* * *	* * *	* * *

[FR Doc. 92-29759 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9F3798/R1175; FRL-4176-9]

RIN 2070-AB78

Pesticide Tolerance for Lactofen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends an interim tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm). This tolerance was requested by the Valent U.S.A. Corp. (formerly Chevron Chemical Co.) and establishes the maximum permissible level for residues of the herbicide in or on this RAC. The interim tolerance expires on December 31, 1993.

EFFECTIVE DATE: This regulation becomes effective December 9, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3798/R1175], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1992 (57 FR 31479), EPA issued a proposed rule that gave notice that pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) and the request of Valent U.S.A. Corp. (formerly Chevron Chemical Co.), 1333 N. California Blvd., P.O. Box 805, Walnut Creek CA 94596-805, the Agency proposed to extend until December 31, 1993, an interim tolerance for the herbicide lactofen and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm).

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the interim tolerance extension will protect the public health. Therefore, the interim tolerance extension is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 19, 1992.

Allan S. Abramson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.432, by revising paragraph (b), to read as follows:

§ 180.432 Lactofen; tolerances for residues.

* * * *

(b) An interim tolerance, set to expire on May 31, 1991, is extended and now expires on December 31, 1993, for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodity:

Commodity	Parts per million
Cottonseed	0.05

[FR Doc. 92-29756 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300263A; FRL-4172-8]

RIN 2070-AB78

D & C Red No. 33; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption for the requirement of a tolerance for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only. This regulation was requested by the BASF Corp.

EFFECTIVE DATE: This regulation becomes effective December 9, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300263A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Conne Welch, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 1992 (57 FR 42730), EPA issued a proposed rule that gave notice that the BASF Corp., Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709-3528, had requested that under section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), the Administrator propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of D & C Red No. 33 (5-amino-4-hydroxy-3-phenylazo-2,7-naphthalene disulfonic acid, disodium salt; CAS Registry No. 3567-66-6) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops only.

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

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

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

Dated: November 6, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
D & C Red No. 33 (CAS Registry No. 3567-66-6); meeting the specifications listed in 21 CFR 74.1333.	.....	Dye
* * * * * * *		

* * * * *

[FR Doc. 92-29757 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-18; Notice 6]

RIN 2127-AD75

Federal Motor Vehicle Safety Standards; Glazing Materials; Correction

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

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to a final rule which was published Wednesday, July 8, 1992, (57 FR 30161). The final rule related to requirements for glazing materials for use in motor vehicles and motor vehicle equipment.

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Nakama, Office of the Chief Counsel, NHTSA, room 5219, 400 Seventh Street, SW., Washington, DC 20590. Ms. Nakama's telephone number is (202) 366-2992.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction document amended 49 CFR 571.205, Standard No. 205; *Glazing Materials,* to permit a new item of glass-plastic glazing for use in motor vehicles and motor vehicle equipment.

Need for Correction

As published, the final rule contains an ambiguity regarding the amendatory language. That language may be interpreted in such a way as to remove an existing sentence from the regulatory text. The agency did not intend to remove that sentence. This document clarifies that intent and ensures that the sentence remains in the regulatory text.

Correction of Publication

Accordingly, the publication on July 8, 1992 of the final rule (Docket No. 89-18; Notice 6), which was the subject of FR Doc. 92-15868, is corrected as follows:

S5.1.2.10 [Corrected]

On page 30164, in the third column, at the top of the column, in line two of the indented paragraph numbered 2., "S5.1.2.10" is corrected to read "the first sentence of paragraph (a) of S5.1.2.10 is revised to read as follows, paragraph (b) of S5.1.2.10".

Issued on: December 2, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92-29735 Filed 12-4-92; 2:41 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921101-2301]

Summer Flounder Fishery

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). The regulations established a seasonal mesh exemption program in an area defined by an irregular line connecting a series of coordinates that is confusing, difficult to follow and complicates administration and enforcement of the exemption program. This emergency interim rule enlarges the area in the seasonal mesh exemption program and simplifies the configuration of the area for both the industry and NMFS, and allows NMFS to conduct sea sampling studies in cooperation with the industry.

DATES: This emergency interim rule is effective from December 4, 1992 through March 9, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281-9324.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations are found at 50 CFR part 625, and are authorized under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The final rule for Amendment 2 to the FMP established a seasonal exemption program that provides vessels with an exemption to the minimum mesh size requirement in an area east of a line projecting, roughly, from Pt. Judith, RI, to and around part of the Southern New England Yellowtail Area described in the Fishery Management Plan for the Northeast Multispecies Fishery, and extending to the outer boundary of the Exclusive Economic Zone (EEZ). A dozen longitude/latitude coordinates are specified to delineate the exemption area. The existing line is difficult to follow and the Council and ASMFC have requested emergency action modify the line. The modified line is a straight line following 72°30′ W. longitude southward from the U.S. coast to the outer boundary of the EEZ. Bounding this exempted area by a straight line should help preclude unintentional violations of the requirements of the program, and improve enforceability and administration as well.

In addition, after listening to industry advisors, the Council and ASMFC wish to improve information on the size distribution of the catch in the northern range of the resource in the area adjacent to, but currently west of the exempted area. Industry has claimed that catches in the area east of 72°30′ W.

longitude consist of large summer flounder, negating the need for a restrictive mesh requirement. Industry leaders have pledged their support to accommodate NMFS sea samplers to document their observations. To allow this cooperative investigation to occur requires that the boundary of the exempted area be moved to 72°30′ W. longitude so that observations can be made with nets of various sizes of mesh.

The Council is preparing an Amendment to the FMP to address this issue in a permanent manner. Emergency action to modify the boundary of the exemption area is needed to establish the new area for the beginning of the seasonal exemption program which traditionally starts on or about November 1. Failure to implement this modification in a timely manner may severely effect the versatility of fishermen participating in the mixed-trawl fishery this winter, resulting in foregone economic opportunities as well as important sea sampling data.

There are no expected negative impacts to the summer flounder fish stock from this action. However, if the discard rates in the area prove to be greater than the 10 percent threshold of the entire summer flounder catch as established by § 625.24(b)(1)(i), the exemption program may be terminated for the remainder of the calendar year. This emergency action does not modify any other management measures contained in the FMP.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget (OMB), with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act (PRA).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

This rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the affected Atlantic coastal states. This determination has been submitted for review by the appropriate state agencies of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, Pennsylvania, and North Carolina under section 307 of the Coastal Zone Management Act.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act. Implementation of this emergency measure will provide regulatory relief to the industry without jeopardizing the viability of the summer flounder resource because discard rates will be monitored and the exemption program may be terminated for the remainder of the calendar year if rates prove to be excessive.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: December 4, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Section 625.8 is amended by temporarily suspending paragraph (a)(8) and adding paragraph (a)(12) from December 4, 1992 through March 9, 1993, to read as follows:

§ 625.8 Prohibitions.

* * * * *

(a) * * *

(12) Fish west of the line specified in § 625.24(b)(1) if exempted from the minimum mesh requirement specified in § 625.24 by an exemption permit issued under § 625.4;

* * * * *

3. Section 625.24 is amended by temporarily suspending paragraph (b)(1) and temporarily adding paragraph (b)(3) from December 4, 1992, through March 9, 1993, to read as follows:

§ 625.24 Gear restrictions.

* * * * *

(b) * * *

(3) Vessels issued a permit under paragraph § 625.4(o) and fishing from 1 November through 30 April in the "exemption area" which is east of a line that follows 72°30′ W. longitude. Vessels fishing with an exemption permit cannot fish west of the foregoing line.

(i) The Regional Director may terminate this exemption if he determines, after review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent of their entire catch of summer flounder per trip. If he makes such a determination, the Regional Director shall publish notification in the **Federal Register** terminating the exemption for the remainder of the year.

(ii) Vessels issued a permit under paragraph § 625.4(o) may transit the area west of the line described in paragraph (b)(1) of this section if the vessel's fishing gear is stowed in a manner prescribed under 50 CFR 651.20(f) so that it is not "available for immediate use" outside the exempted area.

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50 CFR Part 642

[Docket No. 920810-2304]

RIN 0648-AE23

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This final rule: Allows the earned income requirement for a commercial vessel permit for king or Spanish mackerel to be met in any one of the 3 years preceding the permit application; changes the fishing year for recreational bag limits to the calendar year; removes the provisions for reducing a recreational bag limit to zero during a fishing year; increases the minimum size limit for king mackerel to 20 inches (50.8 cm); implements commercial

vessel trip limits for Atlantic migratory group Spanish mackerel; and makes other corrections and clarifications to the regulations to conform them to current usage. In addition, Amendment 6: Revises the problems and objectives of the FMP; specifies periods for rebuilding overfished stocks; changes the required frequency of stock assessments from annual to biennial; adds to the management measures that may be implemented or modified by the framework procedure; and provides for the establishment of separate subgroups and allocations of the Gulf migratory group of king mackerel, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups. This rule and Amendment 6 are intended to protect the coastal migratory pelagic resources from overfishing, continue stock rebuilding programs of king and Spanish mackerel while allowing catches by important recreational and commercial fisheries dependent on them, improve management of the resources, and clarify the regulations.

EFFECTIVE DATE: December 3, 1992, except that § 642.23(a)(3) is effective December 3, 1992, through January 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, (813) 893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, Cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The background and rationale for the changes in Amendment 6 and in this final rule were contained in the proposed rule (57 FR 38810, August 27, 1992) and are not repeated here.

Comment and Response

A comment on the proposed rule was received from the Florida Marine Fisheries Commission (FMFC). The FMFC was concerned that the language regarding transfer at sea of Spanish mackerel subject to the commercial trip limits (50 CFR 642.27(e)) might be construed as a prohibition on several vessels working a single net with the catch of Spanish mackerel divided among the vessels while the net is in the water. Such practice reportedly is common in the fishery. The language of 50 CFR 642.27(e) is modified to clarify that such practice is not prohibited and to conform the paragraph to current standards.

Other Changes From the Proposed Rule

Arrangements have not been completed whereby the Internal Revenue Service (IRS) will verify the documentation of earned income from fishing submitted by applicants for permits. Accordingly, language in 50 CFR 642.4(b)(3) regarding release to and verification by IRS of income tax forms and schedules is deleted. Amendment language will be proposed in a later rulemaking.

The introductory text regarding the requirements for a permitted vessel to display its official number (50 CFR 642.6(a)) is revised for clarity and to conform the regulations with current standards.

A minor modification is made in the explanation of the purse seine incidental catch allowance for king and Spanish mackerel (50 CFR 642.23(c)) to clarify and simplify the language.

Since the proposed rule was published, a final rule established bag limits for king and Spanish mackerel in certain areas that are as contained in referenced state rules of Florida and Texas (57 FR 43153, September 18, 1992). That final rule clarified that changes in the bag limits in the referenced rules will apply in the specified areas of the exclusive economic zone (EEZ), provided the changed bag limits are within certain specified maximum limits. This final rule at 50 CFR 642.24(a)(1) employs the clarifying language of the September 18 rule.

In the charter vessel exception to the general rule prohibiting possession of more than one daily bag limit of king and Spanish mackerel (50 CFR 642.24(a)(2)), the condition that the charter vessel must have two licensed operators aboard "as required by the U.S. Coast Guard for trips of over 12 hours" is revised. The requirements for two licensed operators aboard is explicitly stated in Coast Guard regulations that are applicable to some, but not all, of the vessels included in the term "charter vessel" in these regulations. The Councils, however, have concluded that having two licensed operators aboard on trips of over 24 hours is an appropriate condition for the exception. Accordingly, as a technical change, the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is removed.

The language regarding the transfer at sea of fish taken in the EEZ that are subject to a bag limit (50 CFR 642.24(e)(1)) is revised to conform to current standards and to clarify that such transfer is prohibited, regardless of where it takes place.

The Councils intended that the Atlantic group Spanish mackerel trip limit of 500 pounds (227 kg), applicable after 100 percent of the adjusted allocation is taken, should remain in effect through the end of the fishing year. To carry out that intent, and for consistency with the closure provisions of 50 CFR 642.26(a), 50 CFR 642.27(a)(2)(iv) is revised.

The explanation regarding retention aboard a vessel after timely termination of a trip of Atlantic group Spanish mackerel that are subject to the trip limits (50 CFR 642.27(c)) is revised for clarity.

Approval of Amendment 6

On November 10, 1992, the Secretary of Commerce (Secretary) approved Amendment 6. In addition to the changes in this final rule, Amendment 6 also revises the problems and objectives of the FMP; specifies periods for rebuilding overfished stocks; changes the required frequency of stock assessments from annual to biennial; adds to the management measures that may be implemented or modified by the framework procedure; and provides for the establishment of separate subgroups and allocations of the Gulf migratory group of king mackerel, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups.

Classification

The Secretary determined that Amendment 6 is necessary for the conservation and management of the fishery for coastal migratory pelagic resources and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review (RIR) that concludes that this rule and Amendment 6 are expected to have net positive economic benefits. A summary of the regulatory impacts of individual management measures was included in the proposed rule, with additional analysis and discussion in the RIR, and is not repeated here.

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concluded that the proposed rule, if adopted, would have significant effects on small entities. No comments were received on the IRFA. Accordingly, it is adopted as final without change.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

NMFS conducted a consultation under section 7 of the Endangered Species Act and prepared a biological opinion and incidental take statement concerning management actions in Amendment 6 and the fishery for coastal migratory pelagic resources itself. The determinations, conservation recommendations, and reasonable and prudent measures necessary to minimize impacts of the fishery on endangered and threatened species are listed in the proposed rule and are not repeated here.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Delaware, Florida, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Georgia and Texas do not participate in the coastal management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Delaware, Florida, Mississippi, New Jersey, New York, North Carolina, South Carolina, and Virginia agreed with the determination. Alabama, Louisiana, Maryland, and Pennsylvania did not respond during the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator finds that the following measures in this final rule relieve restrictions: Allowing the earned income for a commercial vessel permit to be met in any one of the 3 years preceding the permit application; and removing the provisions for reducing a recreational bag limit to zero during a fishing year. Accordingly, under section 553(d)(1) of the Administrative Procedure Act (APA), implementation of these measures need not be delayed.

The provision of this final rule that changes the fishing year for recreational bag limits to the calendar year is administrative in nature and has not significant or immediate effect on fishermen. Accordingly, because delay in effectiveness of this measure is not necessary, the Assistant Administrator finds that good cause exists under section 553(d)(3) of the APA not to delay its implementation.

The final rule's commercial vessel trip limits applicable to Atlantic group Spanish mackerel taken in the EEZ off Florida are intended to extend the harvest season and to allocate fairly the available resource among users. The trip limits will effect necessary cooperative Florida/Federal management of the resource. Identical measures applicable to Florida's waters are effective November 24, 1992. Because of the expected winter migration of Atlantic group Spanish mackerel to the area off Florida's east coast, the trip limits must be implemented as soon as possible in order to obtain the desired benefits during the current fishing year. Accordingly, because delay in effectiveness of this measure is not in the public interest, the Assistant Administrator finds that good cause exists under section 553(d)(3) of the APA not to delay its implementation.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 3, 1992.

Nancy Foster,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

§ 642.1 [Amended]

2. In § 642.1, in paragraph (a), the word "developed" is revised to read "prepared".

3. In § 642.2, the definitions for *Acceptable biological catch (ABC), Allocation, Charter vessel crew, Conflict, Overfished, Overfishing, Recreational fishery, Species, Total allowable catch (TAC)*, and *Total length* are removed; in the definition for *Councils*, paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), and in newly designated paragraph (2), "suite 881" is revised to read "suite 331"; in the definition for *EEZ*, paragraphs (a), (b), and (c) are redesignated as paragraphs (1), (2), and (3); in the definition for *Science and Research Director*, the phrase "Southeast Fisheries Center" is revised to read "Southeast Fisheries Science Center"; in the definition for *Statistical area*, the reference to "Figure 3" is revised to read "Figures 1 and 2 of this part"; and the definitions for *Charter vessel* and *Migratory group* are revised to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes a headboat) means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year or a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A charter vessel with a permit to fish under a commercial allocation for king or Spanish mackerel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which may be treated as a separate stock for management purposes. (See § 642.21(a) for the seasonal, geographical boundaries between migratory groups of king mackerel and § 642.21(b) for the geographical boundary between migratory groups of Spanish mackerel.)

* * * * *

4. In § 642.4, paragraphs (a)(1)(i), (a)(1)(ii), and (b)(2)(vi) and the last sentence of paragraph (b)(3) are revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(1) * * *

(i) For a person who fishes aboard a vessel in the EEZ to be eligible for the incidental catch allowance for undersized king and Spanish mackerel specified in § 642.23(b), to be eligible for exemption from the bag limits specified in § 642.24(a), and to fish under a commercial allocation specified in § 642.25 (a) or (b), a vessel permit for

king and Spanish mackerel must be issued to the vessel and be on board.

(ii) A vessel permit for king and Spanish mackerel may be obtained by a qualifying owner or operator of a charter vessel. However, a person aboard such vessel must adhere to the bag limits when the vessel is operating as a charter vessel.

* * * * *

(b) * * *

(2) * * *

(vi) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application, at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch;

* * * * *

(3) * * * Copies of income tax forms and schedules are treated as confidential.

* * * * *

5. In § 642.5, in paragraph (a) introductory text, the phrase "under § 642.4(a)(1)" is revised to read "for king and Spanish mackerel"; in paragraph (a)(3), the parenthetical phrase "(see figure 3)" is revised to read "(see figures 1 and 2 of this part)"; in paragraph (b) introductory text, the phrase "permit under § 642.4(a)(2)" is revised to read "charter vessel permit for coastal migratory pelagic fish"; and paragraphs (e) and (f) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

* * * * *

(e) *Availability of fish for inspection.* An owner or operator of a vessel, a dealer, or a processor must make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

(f) *Alternate Science and Research Director.* For the purposes of paragraphs (c) and (e) of this section, in the states from New York through Virginia, or in the waters off those states, the term "Science and Research Director" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone (508) 548–5123, or a designee.

* * * * *

6. In § 642.6, paragraph (a) introductory text is revised to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* A vessel for which a commercial permit for king and Spanish mackerel has been issued under § 642.4 must display its official number—

* * * * *

7. Section 642.7 is revised to read as follows:

§ 642.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for coast migratory pelagic fish in the EEZ, or possess a coastal migratory pelagic fish in or from the EEZ, aboard a charter vessel that does not have a permit, as specified in § 642.4(a)(2).

(b) Falsify information specified in § 642.4 (b)(2) or (c)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 642.4(h).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 642.5 (a) through (d).

(e) Fail to make a coastal migratory pelagic fish, or parts thereof, available for inspection, as specified in § 642.5(e).

(f) Falsify or fail to display and maintain vessel identification, as specified in § 642.6.

(g) Fish in the EEZ for coastal migratory pelagic fish with prohibited gear or possess any coastal migratory pelagic fish in or from the EEZ aboard a vessel with prohibited gear aboard, as specified in § 642.22(a).

(h) Fish in the EEZ for king or Spanish mackerel with a gillnet with a mesh size less than the minimum allowable, or possess king or Spanish mackerel in or from the EEZ on a vessel that has aboard a gillnet with a mesh size less than the minimum allowable, as specified in § 642.22(b).

(i) Possess a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(1), except for the incidental catch allowance specified in § 642.23(b).

(j) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(2), except for such undersized king and Spanish mackerel that may be lawfully possessed under § 642.23(b).

(k) Possess a king mackerel, Spanish mackerel, or cobia without its head and fins intact, as specified in § 642.23(c).

(l) Operate a vessel with king mackerel, Spanish mackerel, or cobia aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 642.23(d) and § 642.24(d).

(m) Retain or possess king mackerel, Spanish mackerel, or cobia in or from the EEZ in excess of the bag and possession limits specified in § 642.24 (a)(1), (a)(2), and (b).

(n) Transfer at sea a king mackerel, Spanish mackerel, or cobia taken under a bag or possession limit, as specified in § 642.24(e).

(o) Aboard a vessel in the commercial fishery, fish for king or Spanish mackerel in the EEZ or retain a king or Spanish mackerel in or from the EEZ after a closure, as specified in § 642.26(b)(1), except as may be allowed aboard a charter vessel, as specified in § 642.26(b)(2), and except as may be authorized under § 642.22(c).

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(q) Exceed a commercial trip limit for Atlantic group Spanish mackerel, as specified in § 642.27(a).

(r) Transfer at sea from one vessel to another an Atlantic group Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(e).

(s) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.28.

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

8. Subpart B of part 642 is revised to read as follows:

Subpart B—Management Measures

Sec.
642.20 Fishing years.
642.21 Area and time separation.
642.22 Vessel, gear, and equipment limitations.
642.23 Harvest limitations.
642.24 Bag and possession limits.
642.25 Commercial allocations and quotas.
642.26 Closures.
642.27 Commercial trip limits for Atlantic group Spanish mackerel.
642.28 Prevention of gear conflicts.
642.29 Adjustment of management measures.
642.30 Specifically authorized activities.

Subpart B—Management Measures

§ 642.20 Fishing years.

(a) *Commercial mackerel fisheries.* The fishing year for the Gulf migratory group of king mackerel for commercial allocations and quotas begins on July 1 and ends on June 30. The fishing year

for all other groups of king and Spanish mackerel for commercial allocations begins on April 1 ends on March 31.

(b) *All other fisheries.* The fishing year for the recreational mackerel fisheries, and for coastal migratory pelagic fish other than king and Spanish mackerel, begins on January 1 and ends on December 31.

§ 642.21 Area and time separation.

(a) *King mackerel:*

(1) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48′ N. latitude) to the outer limit of the EEZ.

(2) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′ N. latitude) to the outer limit of the EEZ.

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the Dade/Monroe County, Florida boundary (25°40.4′ N. latitude) to the outer limit of the EEZ.

§ 642.22 Vessel, gear, and equipment limitations.

(a) *Prohibited gear:* (1) *Drift gillnets.* The use of a drift gillnet to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gillnet aboard may not possess any coastal migratory pelagic fish.

(2) *Other gear.* (i) Fishing gear is prohibited for use in the EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel Gulf migratory group—all gear other than hook and line and run-around gillnets.

(B) Spanish mackerel Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c) of this section, a vessel in the EEZ in an area specified in § 642.21 for a migratory group or having fished in the EEZ in such area with prohibited gear aboard may not possess any of the species for which that gear is prohibited.

(b) *Gillnets:* (1) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for king mackerel is 4¾ inches (12.1 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 4¾ inches (12.1 cm), stretched mesh, may possess an incidental catch of king mackerel that does not exceed 10 percent, by number, of the total lawfully possessed Spanish mackerel aboard.

(2) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for Spanish mackerel is 3½ inches (8.9 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 3½ inches (8.9 cm), stretched mesh, may not possess any Spanish mackerel.

(c) *Purse seine incidental catch allowance.* A vessel in the EEZ or having fished in the EEZ with a purse seine aboard will not be considered as fishing or having fished for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (a)(2) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.26(a), provided the king mackerel aboard does not exceed 1 percent or the Spanish mackerel aboard does not exceed 10 percent of all fish aboard the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.25 (a) or (b) and are subject to the prohibition of sale under § 642.26(b)(3).

§ 642.23 Harvest limitations.

(a) *Minimum sizes.* (1) Except for the incidental catch allowance for undersized king and Spanish mackerel under paragraph (b) of this section, the minimum size limits for the possession of king mackerel, Spanish mackerel, and cobia in or from the EEZ are—

(i) Beginning on January 4, 1993, king mackerel—20 inches (50.8 cm), fork length;

(ii) Spanish mackerel—12 inches (30.5 cm), fork length; and

(iii) Cobia—33 inches (83.8 cm), fork length.

(2) Except for such undersized king and Spanish mackerel that may be lawfully possessed under paragraph (b) of this section, a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(3) From December 3, 1992, through January 3, 1993, the minimum size limit for the possession of king mackerel in or from the EEZ is 12 inches (30.48 cm), fork length, or 14 inches (35.56 cm), total length.

(b) *Incidental catch allowance.* Aboard a vessel in the commercial fishery, provided such vessel is not operating as a charter vessel,

(1) The possession of king mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of king mackerel aboard; and

(2) The possession of Spanish mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of Spanish mackerel aboard.

(c) *Head and fins intact.* A king mackerel, Spanish mackerel, or cobia in or from the EEZ must have its head and fins intact through off-loading. Such king mackerel, Spanish mackerel, or cobia may be eviscerated but must otherwise be maintained in a whole condition.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that king mackerel, Spanish mackerel, and cobia possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section, except for such undersized king and Spanish mackerel that may be lawfully possessed under paragraph (b) of this section; and are maintained with head and fins intact as specified in paragraph (c) of this section.

§ 642.24 Bag and possession limits.

(a) *King and Spanish mackerel:* (1) *Daily bag limits.* A person who fishes for king or Spanish mackerel in the EEZ, except a person in the commercial fishery and fishing under a commercial allocation specified in § 642.25 (a) or (b), or possessing the purse seine incidental catch allowance specified in § 642.22(c), may not retain or possess king or Spanish mackerel in or from the EEZ exceeding the following daily limits:

(i) *King mackerel Gulf migratory group*—two per person.

(ii) *King mackerel Atlantic migratory group:*

(A) *Northern area*—five per person; and

(B) *Southern area*—the limit specified by Florida in Rule 46–12.004, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed five per person.

(iii) *Spanish mackerel Gulf migratory group:* (A) *Eastern area*—the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural

Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed ten per person;

(B) *Central area*—ten per person; and

(C) *Western area*—the limit specified by Texas in Rule 31–65.72, Texas Administrative Code, or as subsequently amended, but in any event not to exceed ten per person.

(iv) *Spanish mackerel Atlantic migratory group:*

(A) *Northern area*—ten per person; and

(B) *Southern area*—the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or as subsequently amended, but in any event not to exceed ten per person.

(2) *Multi-day possession limit.* A person subject to a bag limit specified in paragraph (a)(1) of this section may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any king or Spanish mackerel in excess of such bag limit, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided—

(i) Such trip is aboard a charter vessel;

(ii) The vessel has two licensed operators aboard; and

(iii) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(3) *Areas.* For the purpose of paragraph (a)(1) of this section:

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42′45.6″ N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. longitude) to the outer limit of the EEZ; and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1′ N. latitude, 93°47.7′ W. longitude to point B (on the outer limit of the EEZ) at 26°11.4′ N. latitude, 92°53′ W. longitude.

(4) *Fishing after a closure.* After a closure under § 642.26(a) is invoked for a commercial allocation or quota specified in § 642.25(a) or (b)(1), for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a), the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel in or from the closed area is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether the cobia are taken aboard a vessel in the commercial fishery.

(c) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag or possession limit of this part with any bag or possession limit applicable to state waters.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(e) *Transfer of fish.* A person for whom a bag or possession limit specified in this section applies may not transfer at sea a king mackerel, Spanish mackerel, or cobia—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel, Spanish mackerel, or cobia was taken.

§ 642.25 Commercial allocations and quotas.

A fish is counted against the commercial allocation or quota for the area where it is caught when it is first sold.

(a) *Commercial allocations and quotas for king mackerel.*

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. This allocation is divided into quotas as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone; and

(ii) 0.77 million pounds (0.35 million kg) for the western zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.90 million pounds (1.77 million kg) per fishing year. No more than 0.4 million pounds (0.18 million kg) may be harvested by purse seines.

(b) *Commercial allocations for Spanish mackerel.*

(1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 4.90 million pounds (2.22 million kg) per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 3.50 million pounds (1.59 million kg) per fishing year.

(c) *Zones.* For the purpose of paragraph (a)(1) of this section, the boundary between the eastern and western zones is a line extending directly south from the Alabama/Florida boundary (87°31′06″W. longitude) to the outer limit of the EEZ.

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by publication of a notice in the **Federal Register**, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group or zone and for Spanish mackerel from the Gulf migratory group when the allocation or quota under § 642.25(a) or (b)(1) for that migratory group or zone has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* After a closure under paragraph (a) of this section is invoked, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a)—

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species/migratory group/zone, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel the permit for which indicates both king and Spanish mackerel and charter vessel for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 642.24 (a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species/migratory group/zone, is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

§ 642.27 Commercial trip limits for Atlantic group Spanish mackerel.

(a) Commercial trip limits are established for Atlantic group Spanish mackerel as follows:

(1) In the northern zone, that is, north of a line extending directly east from the Georgia/Florida boundary (30°42′45.6″ N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed

from a vessel in a day in amounts exceeding 3,500 pounds (1,588 kg).

(2) In the southern zone, that is, south of a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day—

(i) From April 1 through November 30, in amounts exceeding 1,500 pounds (680 kg).

(ii) From December 1 until 80 percent of the adjusted allocation is taken, in amounts as follows:

(A) Mondays, Wednesdays, and Fridays—unlimited.

(B) Tuesdays and Thursdays—not exceeding 1,500 pounds (680 kg).

(C) Saturdays and Sundays—not exceeding 500 pounds (227 kg).

(iii) After 80 percent of the adjusted allocation is taken until 100 percent of the adjusted allocation is taken, in amounts not exceeding 1,000 pounds (454 kg).

(iv) After 100 percent of the adjusted allocation is taken through the end of the fishing year, in amounts not exceeding 500 pounds (227 kg).

(b) For the purpose of paragraph (a)(2) of this section, the adjusted allocation of Atlantic migratory group Spanish mackerel is 3.25 million pounds (1.47 million kg). The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. The Assistant Administrator, by publication of a notice in the **Federal Register**, will announce when 80 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

(c) For the purpose of paragraph (a)(2) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. For example, Monday starts at 6 a.m. on Monday and extends to 6 a.m. on Tuesday. If a vessel terminates a trip prior to 6 a.m. but retains Spanish mackerel aboard after that time, the Spanish mackerel retained aboard will not be considered in possession during the succeeding day provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded and provided such Spanish mackerel are unloaded prior to 6 p.m.

(d) A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) A person for whom a trip limit specified in this section applies may not transfer at sea from one vessel to another a Spanish mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such Spanish mackerel was taken.

§ 642.28 Prevention of gear conflicts.

In accordance with the procedures and restrictions of the Fishery Management Plan for Coastal Migratory Pelagic Resources, when the Regional Director determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the EEZ off the east coast of Florida between 27°00.6' N. latitude and 27°50.0' N. latitude, the Regional Director may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 642.29 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for Coastal Migratory Pelagic Resources, the Regional Director may establish or modify for cobia or for king or Spanish mackerel, and migratory groups of king or Spanish mackerel, the following: Maximum sustainable yield, total allowable catch, allocations, adjusted allocations, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

§ 642.30 Specifically authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

9. The two grids constituting Figure 3 of appendix A are transferred out of appendix A and redesignated as Figure 1 to part 642 and Figure 2 to part 642, respectively; the heading for newly designated Figure 1 is revised to read "FIGURE 1 TO PART 642—STATISTICAL GRIDS FOR THE GULF OF MEXICO" and the title at the bottom of the figure is removed; a heading is added to newly designated Figure 2 to read "FIGURE 2 TO PART 642—STATISTICAL GRIDS FOR THE SOUTH ATLANTIC AND MID-ATLANTIC" and the title at the bottom of the figure is removed; and Appendix A is removed.

[FR Doc. 92-29747 Filed 12-3-92; 5:06 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 920944-2302]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Allocation of Community Development Quota pollock to approved Community Development Plan applicants for 1992 and 1993.

SUMMARY: NMFS announces the approval by the Secretary of Commerce (Secretary) of recommendations made by the Governor of the State of Alaska (Governor) for Community Development Plans (CDPs) during the calendar years 1992 and 1993 under authority of the Community Development Quota (CDQ) program. This action is necessary to publicize the decision of the Secretary to approve the Governor's recommended CDPs, including the percentage of the CDQ reserve for each subarea allocated under the CDPs, and to announce the availability of findings underlying the Secretary's decision. It is intended to further the goals and objectives of the North Pacific Fishery management Council.

DATES: Effective December 4, 1992.

ADDRESSES: Individual copies of the findings made by the Secretary in approving the Governor's recommendation may be obtained from the Fisheries Management Division, Alaska Region, NMFS. P.O Box 21668, Juneau, AK 99802 (ATTN: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The CDQ program was developed by the North Pacific Fishery Management Council (Council) and submitted with Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), which was approved in part by the Secretary June 3, 1992 (57 FR 23321). Federal regulations implementing the CDQ program became effective on November 18, 1992 (57 FR 54936, November 23, 1992). These regulations specify procedures governing the CDQ program.

Eligible western Alaska communities submitted six CDPs requesting allocations of the available CDQ pollock reserve to the Governor under CDQ procedures. The Governor announced a

public hearing date of November 24, 1992, in Anchorage, Alaska and conducted the public hearing during which all interested persons had an opportunity to be heard. The hearing covered the substance and content of the proposed CDPs in such a manner that the general public, and particularly the affected parties, had a reasonable opportunity to understand the impact of each CDP. The Governor made available for public review all State of Alaska materials pertinent to the hearing at the time the hearing was announced. The public hearing held by the Governor satisfied the requirements of § 675.27(a).

On November 25, 1992, the Governor consulted with the Council. After reviewing the Governor's recommendations and considering public testimony, the Council concurred in the Governor's recommendations for CDPs and the percentages of the CDQ reserve for each CDP for the years 1992 and 1993.

On November 27, 1992, the Secretary received the Governor's recommendations to approve the CDPs. The Secretary reviewed the recommendations and the record to determine whether the community eligibility criteria and the evaluation criteria set forth in § 675.27(d) were met. The Secretary determined that the Governor's recommendations are consistent with the eligibility conditions, the evaluation criteria, and other applicable law and, therefore, approves the Governor's recommendations.

As required by § 675.27(c)(1), the Secretary publishes this notice of approval of the Governor's recommendations, including the percentage of the CDQ reserve allocated for each subarea under the approved CDPs, and announces the availability of the Secretary's findings regarding this decision (see **ADDRESSES**).

During 1992, the CDQ reserve is 101,445 metric tons (mt), representing 7.5 percent of the pollock total allowable catch specification for each of the three subareas constituting the BSAI area. The percentages and resulting CDQ allocations of CDQ reserve among each subarea are:

Bering Sea—96.1 percent (97,500 mt); Aleutian Islands—3.8 percent (3,870 mt); and Bogoslof—0.1 percent (75 mt).

NMFS will manage the CDQ program to allow each CDQ recipient to fish in the Bering Sea and/or the Aleutian Islands subareas. The Bogoslof subarea is closed to directed fishing for pollock for the 1992 fishing year. NMFS will close separately the Bering Sea and Aleutian Islands subareas when aggregate catches in these two subareas reach 97,500 mt and 3,870 mt, respectively. Although each CDP participant may harvest pollock up to its allocation, it may need to shift operations to another subarea if a subarea is closed to further CDQ fishing.

The Secretary approves the following percentages of CDQ reserve for each CDP recipient for 1992 and 1993 and approves the corresponding metric tonnages (rounded off to the nearest ton) of CDQ pollock allocated to each recipient in 1992 as follows:

CDP recipient	CDQ percentage for 1992 & 1993	Allocation in 1992 (mt)
Aleutian Pribilof Island Community Development Assn	16	16,190
Bristol Bay Economic Development Corp	20	20,289
Central Bering Sea Fishermen's Assn	10	10,144
Coastal Villages Fishing Coop	27	27,390
Norton Sound Fisheries Development Assn	20	20,289
Yukon Delta Fisheries Development Assn	5	5,073

Classification

This action is taken under 50 CFR 675.27 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: December 3, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-29768 Filed 12-4-92; 12:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 237
Wednesday, December 9, 1992

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 872 and 873

RIN 3206-AE64

Federal Employees' Group Life Insurance Program: Election of Optional Coverage Upon Divorce or Death of a Spouse

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its Federal Employees' Group Life Insurance (FEGLI) Program regulations to allow Federal employees who have Basic FEGLI coverage an opportunity to elect Option B and/or Option C, or to add multiples of Option B, upon divorce or death of a spouse. This will provide consistency of election opportunity for all employees who experience a change in family status, whether upon marriage, divorce, death of a spouse, or acquisition of a child.

DATES: Comments must be received on or before February 8, 1993.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0191.

SUPPLEMENTARY INFORMATION: Currently, enrolled employees may elect the Option B/C coverage upon marriage or acquisition of a child. This election opportunity is premised on the fact that life insurance needs can increase when family members are added. It is also true that an enrollee's life insurance needs might increase upon divorce or death of a spouse, since the remaining parent may have sole responsibility for the welfare of children.

In addition to expanding the Option B/C election opportunity, we are also granting affected enrollees who have children the opportunity to add multiples of Option B upon the death or divorce of a spouse, when the enrollee acquires children as a result of the death or divorce. Again, this is consistent with already existing changes in family status provisions.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they relate to Federal employees and annuitants.

List of Subjects in 5 CFR Parts 872 and 873

Administrative practice and procedures, Government employees, Hostages, Life insurance, Retirement.

Office of Personnel Management

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR parts 872 and 873 as follows.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

1. The authority citation for parts 872 and 873 continue to read as follows:

Authority: 5 U.S.C. 8716

2. Section 872.205, is amended by revising the current first and last sentences of paragraphs (a)(2) and (a)(4) and adding new last sentences to paragraphs (a)(2) and (a)(4) to read as follows:

§ 872.205 Cancellation of declination.

(a) * * *

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or divorce, or upon a spouse's death, or upon the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and subpart G of part 873 of this chapter. * * * The number of multiples which an employee may obtain upon marriage or acquisition of children is limited to the number of additional family members (spouse and/or children) associated with the marriage or acquisition of children. The number of multiples which an employee may obtain upon divorce or a spouse's death is limited to the number of dependent children of the enrollee.

* * * * *

(4) An employee who has in force additional optional insurance of at least one but fewer than five multiples of annual pay may elect to increase the number of multiples upon his/her marriage or divorce, or upon a spouse's death, or upon the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter. * * * The number of multiples which an employee may obtain upon marriage or acquisition of a child is limited to the numbers of additional family members (spouse and/or children) associated with the marriage or acquisition of children. The number of multiples which an employee may obtain upon divorce or a spouse's death is limited to the number of dependent children of the enrollee.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. In section 873.205(a), the first sentence is revised to read as follows:

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage, or upon the acquisition of an unmarried dependent child, or upon divorce or a spouse's death, if the enrolled has dependent children. * * *

* * * * *

[FR Doc. 92-29780 Filed 12-8-92; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the

official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions being proposed are limited, and attempt to address regulatory provisions needing clarification or issues for which there may be a general need for more guidance. The revisions address the interplay between the Truth in Lending rules on demand features and other Federal rules dealing with credit extended to executive officers of depository institutions. They provide greater flexibility in complying with the disclosure requirements under Regulation Z in these transactions. The disclosure rules for security interests (particularly those in rescindable transactions) also would be clarified. The commentary would offer creditors alternative methods of disclosing security interests in rescindable transactions.

DATES: Comments must be received on or before January 29, 1993.

ADDRESSES: Comments should refer to Docket No. TIL-1 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. on weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), all comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B-1122 of the Eccles Building, between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Michael Bylsma, Leonard Chanin, Kyung Cho, Kurt Schumacher, or Mary Jane Seebach, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. It is expected that the proposed update will be adopted in final form in March 1993 with compliance optional until October 1, 1993, the uniform effective date for mandatory compliance.

(2) *Form of comments.* The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format with a paper copy of the comment included.

(3) *Proposed revisions.* The following is a description of the proposed revisions to the commentary:

Subpart A—General

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(25) Security interest. The Board has received numerous questions recently about the disclosure of security interests—particularly in rescission notices—and about the appropriate use of the model rescission form for a refinancing with an original creditor. Comment 2(a)(25)-6 would be revised to clarify that disclosures about collateral securing a transaction need not specify how the security interest is taken, for example, by "acquiring" a new security interest or by "retaining" an existing security interest. The proposed revision would expand on an interpretation added in the 1989 commentary update (54 FR 9417, March 7, 1989). It would be added to that comment on the definition of "security interest" because of its applicability to the security interest disclosures under multiple sections of the regulation (§§ 226.6, 226.15, 226.18 and 226.23). Sample language would be provided to illustrate how a rescission notice could disclose the fact that a transaction is secured by the consumer's home without any additional detail about the security interest.

The proposed comment further states that the model form for rescission of refinancings with an original creditor (model form H-9) which discloses the retention of a security interest in a consumer's principal dwelling, also adequately discloses the fact of a security interest where a new security interest is acquired (and the preexisting security interest is replaced by the new one). As stated in the Supplementary Information to the 1989 commentary update, comment 2(a)(25)-6 was intended to clarify "that the disclosure that an interest is retained, as in form H-9, is adequate in a refinancing where a new mortgage if filed and a new advance is made." The revision now being proposed would specifically incorporate that position into the commentary.

The proposed commentary revisions should make clear that the requirements about disclosure of a security interest in a rescission notice may be satisfied with either a generic statement of the fact that the consumer's home is security for the transaction or with a more detailed disclosure about that security interest. It would further make clear, as an alternative to modifying rescission notices to include more generic disclosures, that the form H-9 may be used—without modification—in any case in which an original creditor refinances a transaction (whether or not the refinancing involves keeping in place an existing security interest for any period of time or involves taking a new security interest).

Subpart B—Open-End Credit

Section 226.5b Requirements for Home-Equity Plans

5b(d) Content of Disclosures

5b(d)(4) Possible actions by creditor—Paragraph 5b(d)(4)(iii). Comment 5b(d)(4)(iii)-1 would be revised to reflect the amendment to § 226.5b(f)(2) adopted by the Board in August 1992. (57 FR 34676, August 6, 1992.) The Board amended the regulation to provide that a depository institution may terminate and demand payment of the balance on any home equity line of credit extended to its executive officers to the extent Federal law requires that the credit shall be due and payable on demand. (See § 226.5b(f)(2)(iv).) For example, Regulation O contains this requirement for state member banks of the Federal Reserve System. (See 12 CFR 215.5.)

In the Supplementary Information accompanying the amendment, the Board stated that the regulation requires that this provision be part of the home-equity agreement, although this feature is not required to be disclosed with the preapplication disclosures. The proposed commentary would restate this position.

5b(f) Limitations on home equity plans—Paragraph 5b(f)(2). Comment 5b(f)(2)-1 would be revised to clarify that a creditor may terminate a plan as provided in § 226.5b(f)(2)(iv).

Section 226.6 Initial Disclosure Statement

6(e) Home Equity Plan Information

Comment 6(e)–1 would be revised to add a cross reference to comment 5b(d)(4)(iii)–1. This reflects the position taken in the Supplementary Information of the August 6, 1992 **Federal Register** notice that the termination feature in § 226.5b(f)(2)(iv) also need not be specifically disclosed under § 226.6(e).

Subpart C—Closed-End Credit

Section 226.18 Content of Disclosures

18(i) Demand Feature

Comment 18(i)–2 would be revised to address how the rule in the Board's Regulation O (and other comparable Federal financial regulatory agency rules) relates to the disclosure rules for demand features in closed-end credit transactions. It parallels the treatment of such features in open-end credit. The proposed comment provides that if an institution retains the ability to demand payment of a loan in its closed-end credit agreement with its executive officers to the extent required by Federal law, the institution need not provide demand disclosures. Of course, if an institution has a demand feature in its closed-end agreement with its executive officers that is broader than that required by Federal law, such a feature would have to be disclosed under § 226.18(i).

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Paragraph (19)(b)(2)(xi). Demand features must be disclosed in variable rate mortgages covered by § 226.19(b). Since disclosure of a demand feature for variable-rate mortgages is determined by reference to § 226.18(i), a cross-reference would be added to comment 19(b)(2)(xi)–1 dealing with demand features.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets. The Board is publishing only those sections of the commentary that would be affected by the changes.

Text of Proposed Revisions

For the reasons set forth in the preamble and pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend the official staff commentary to Regulation Z (12 CFR part 226, Supplement I) as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

SUPPLEMENT I TO PART 226—[AMENDED]

2. In Supplement I to part 226, under the heading "*2(a) Definitions*", comment 2(a)(25)–6 would be amended by adding three new sentences at the end to read as follows:

2(a)(25) Security interest.

* * * * *

6. *Specificity of disclosure.* * * * ⧫In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. Thus, a rescission notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in a transaction. The retention or acquisition of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction." A statement such as this may be used, for example, instead of the second sentence in model form H–9 and could apply both to a refinancing in which a new security interest is taken by the original creditor and one in which an existing security interest is maintained. (Of course, because model form H–9 adequately discloses the fact that the home is security for the transaction, it may be used without modification in both a refinancing in which a new security interest is taken by the original creditor and one in which an existing security interest is retained by that creditor.)⧫

* * * * *

SUPPLEMENT I TO PART 226—[AMENDED]

3. In Supplement I to part 226, under the heading "*5b(d) Content of Disclosures*", comment 5b(d)(4)(iii)–1 would be amended by revising the fourth sentence and adding a sentence after the fourth sentence to read as follows:

Paragraph 5b(d)(4)(iii).

1. *Disclosure of conditions.* * * * As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§ 226.5b(f)(2)⧫(i)–(iii)⧫, 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 226.5b(f)(3)(vi) or language that is substantially similar. ⧫The condition contained in § 226.5b(f)(2)(iv) need not be stated.⧫ * * *

* * * * *

SUPPLEMENT I TO PART 226—[AMENDED]

4. In Supplement I to part 226, under the heading "*5b(f) Limitations on Home Equity Plans*", comment 5b(f)(2)–1 would be amended by revising the second sentence to read as follows:

Paragraph 5b(f)(2).

1. *Limitations on termination and acceleration.* * * * However, creditors may take these actions in the [three] ⧫four⧫ circumstances specified in § 226.5b(f)(2). * * *

* * * * *

SUPPLEMENT I TO PART 226—[AMENDED]

5. In Supplement I to part 226, under the heading "*6(e) Home Equity Plan Information*", comment 6(e)–1 would be amended by adding a parenthetical at the end to read as follows:

1. *Additional disclosures required.* * * * Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. ⧫(See comment 5b(d)(4)(iii)–1.)⧫

* * * * *

SUPPLEMENT I TO PART 226—[AMENDED]

6. In Supplement I to part 226, under the heading "*18(i) Demand feature*", comment 18(i)–2 would be amended by adding a new sentence at the end to read as follows:

2. *Covered demand features.* * * * ⧫A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature, when such a provision is required by Federal law.⧫

* * * * *

SUPPLEMENT I TO PART 226—[AMENDED]

7. In Supplement I to part 226, under the heading "*19(b) Certain variable-rate transactions*", comment 19(b)(2)(xi)–1 would be amended by revising the first sentence to read as follows:

Paragraph 19(b)(2)(xi).

1. *Demand feature.* If a variable-rate loan subject to § 226.19(b) requirements contains a demand feature ⧫as discussed in § 226.18(i)⧫, this fact must be disclosed. * * *

* * * * *

Board of Governors of the Federal Reserve System, December 1, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–29552 Filed 12–8–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–36–AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aircraft Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 74–24–02, which currently requires repetitive inspections of the horizontal stabilizer rear spar at the outboard elevator hinge bracket for cracks on certain Fairchild Aircraft SA226 series airplanes, and repair if cracks are found. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require modification of the outboard elevator hinge as terminating action for the repetitive inspections currently required by AD 74–24–02; and increase the applicability to include certain Fairchild Aircraft SA227 series airplanes of similar type design that are currently not affected by the existing AD. The actions specified in the proposed AD are intended to prevent failure of the horizontal rear spar, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 15, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–36–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of an adjacent structure being damaged as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires the incorporation of a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to Fairchild SA226 and SA227 series airplanes. Assisting the FAA in this review were (1) Fairchild Aircraft; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 74–24–02, Amendment 39–2529, as one that should be superseded with a new AD that would require a modification and eliminate short-interval and critical repetitive inspections. This AD currently requires repetitive inspections of the horizontal stabilizer rear spar at the outboard elevator hinge bracket for cracks on certain Fairchild Aircraft SA226 series airplanes, and repair if any cracks are found. The actions are required to be accomplished in accordance with Swearingen Service Bulletin (SB) A27–40–3067, revised October 9, 1974; or Swearingen SB A27–40–2064–4067, revised October 9, 1974, as applicable.

Fairchild has issued Service Bulletin (SB) 226–55–005, Issued: August 15, 1985, Revised: January 7, 1991, which specifies installation procedures for a reinforcing channel, radius block, and improved gussets on the outward elevator hinge on certain Fairchild Aircraft SA226 series airplanes. In addition, the FAA has determined that certain Fairchild Aircraft SA227 series airplanes are of similar design and should be affected by the proposed AD action. Fairchild Aircraft has also issued SB 227–55–002, Issued: August 15, 1985, Revised: October 13, 1988, which specifies the same installation procedures as Fairchild Aircraft SB

226–55–005, except that the procedures apply to Fairchild Aircraft SA227 series airplanes.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that (1) the procedures specified in the referenced service information incorporate an improved design change that could replace the repetitive inspections currently required by AD 74–24–02; and (2) AD action should be taken to eliminate these repetitive short-interval inspections and prevent failure of the horizontal rear spar, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would supersede AD 74–24–02 with a new AD that would (1) initially retain the repetitive inspections of the horizontal stabilizer rear spar at the outboard elevator hinge bracket for cracks, and repair if any cracks are found; and (2) require eventual modification of the outboard elevator hinge as terminating action for the repetitive inspections currently required by AD 74–24–02. The proposed actions would be accomplished in accordance with Fairchild Aircraft SB 226–55–005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227–55–002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

The FAA estimates that 668 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $220 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,249,160.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 668 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 30 percent are operated in scheduled passenger service by 19 different operators. A significant number of the remaining 70 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,000 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 10 to 20 calendar years before the proposed modification would be mandatory.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by removing AD 74–24–02, Amendment 39–2529, and adding the following new AD:

Fairchild Aircraft (formerly Swearingen Aircraft Corporation): Docket No. 91–CE–36–AD. Supersedes AD 74–24–02 Amendment 39–2529.

Applicability: Models SA226–T, SA226–AT, SA226–TC, SA227–TT, SA227–AC, and SA227–AT airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the horizontal rear spar, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), unless already accomplished within the last 450 hours TIS, and thereafter at intervals not to exceed 500 hours TIS until the modification required by paragraph (b) of this AD is accomplished, dye penetrant inspect the horizontal stabilizer rear spar at the left and right outboard elevator hinge bracket attachment for cracks in accordance with the Accomplishment Instructions section of Fairchild Aircraft Service Bulletin (SB) 226–55–005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227–55–002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

(b) If cracks are found in the horizontal stabilizer rear spar, prior to further flight, repair any crack in accordance with a repair scheme obtained from the manufacturer through the Manager, Fort Worth Airplane Certification Office, at the address specified in paragraph (f) of this AD.

(c) Within the next 2,200 hours TIS, modify the outboard hinge in accordance with the Accomplishment Instructions section of Fairchild Aircraft SB 226–55–005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227–55–002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

(d) The accomplishment of the modification required by paragraph (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD. This modification may be accomplished at any time prior to 500 hours TIS.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred

to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 74-24-02, Amendment 39-2529.

Issued in Kansas City, Missouri, on December 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-29824 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-49-AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU-2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd., (Mitsubishi) MU-2B series airplanes. The proposed action would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. Analysis of service history on the affected airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. The actions specified by the proposed AD are intended to prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-49-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or the Beech Aircraft Corporation, 9709 East Central, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-49-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-49-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA's review of the service history of certain Mitsubishi MU-2 series airplanes has revealed one accident and two incidents where the existing elevator nose-down trim deflection caused excessive control wheel force. Extreme elevator nose-down trim deflection, if not corrected, could result in loss of control of the airplane.

Mitsubishi has issued Service Bulletin (SB) No. 079/27-010, dated August 28, 1992, which specifies procedures for reducing the elevator nose-down trim deflection to a 1-degree to 3-degree range on certain MU-2 series airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to correct the unsafe condition.

Since the condition described is likely to exist or develop in other Mitsubishi MU-2 series airplanes of the same type design, the actions specified by the proposed AD would reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range. The proposed action would be accomplished in accordance with the service bulletin described above.

The FAA estimates that 989 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $623,070.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries, Ltd.: Docket No. 92-CE-49-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
MU-2B-25, MU-2B-26, MU-2B-26A, and MU-2B-40.	313SA, 321SA, and 348SA through 459SA.
MU-2B-35, MU-2B-36,MU-2B-36A, and MU-2B-60.	652SA, 661SA, and 697SA through 1569SA.

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

To prevent excessive control wheel force caused by extreme elevator nose-down trim deflection, which could result in loss of control of the airplane, accomplish the following:

(a) Reduce the maximum deflection of the elevator nose-down trim to a 1-degree to 3-degree range in accordance with the INSTRUCTIONS section of Mitsubishi Service Bulletin No. 079/27-010, dated August 28, 1992.

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

(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, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or the Beech Aircraft Corporation, 9709 East Central, Wichita, Kansas 67201; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-29825 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AEA-09]

Proposed Cancellation of Transition Area; Manahawkin, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to cancel the established 700 foot Transition Area at Manahawkin, NJ, due to the reported abandonment of the Manahawkin Airport, Manahawkin, NJ, and the pending cancellation of all instrument approach procedures (IAP) to this airport. The purpose of this proposed action would be to raise controlled airspace to contain aircraft operations, back to 1200 feet above the surface.

DATES: Comments must be received on or before January 15, 1993.

ADDRESSES: Send comments on the rule in triplicate to: John W. Kies, Acting Manager, System Management Branch, AEA-530, Docket No. 92-AEA-09, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AEA-09". The postcard will be date/time stamped and returned to the commentor. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area at Manahawkin, NJ, due to the reported abandonment of the Manahawkin Airport, Manahawkin, NJ, and the pending cancellation of all IAPs to this airport. The coordinates for this airspace docket are based on North American Datum 83. Transition Areas are

published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Transition Area listed in this document would be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that, when promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is proposed to be amended as follows:

Section 71.181 Designation of Transition Areas

* * * * * *

AEA NJ TA Manahawkin, NJ [Removed]

* * * * *

Issued in Jamaica, New York, on November 17, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–29894 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–ASO–17]

Proposed Revocation of Control Zone and Transition Area, Oak Grove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Oak Grove, NC Control Zone and Transition Area. The Oak Grove HOLF (Navy) Airport has been permanently closed; thus a need no longer exists for the controlled airspace associated with the existing control zone and transition area.

DATES: Comments must be received on or before: January 28, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92–ASO–17, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Oak Grove, NC Control Zone and Transition Area. The Oak Grove HOLF (Navy) Airport has been permanently closed. Consequently, a need no longer exists for the controlled airspace associated with the existing control zone and transition area. Control Zones and Transition Areas are published in §§ 71.171 and 71.181, respectively, of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Control Zone and Transition Area listed in this document would be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 CFR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ASO NC CZ Oak Grove, NC [Removed]

* * * * *

Section 71.181 Designation of Transition Areas

* * * * *

ASO NC TA Oak Grove, NC [Removed]

* * * * *

Issued in East Point, Georgia, On October 29, 1992.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92–29891 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–18]

Proposed Establishment of Transition Area, Summerville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Summerville, SC, Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Dorchester County Airport based on the Dorchester County Non-directional Radio Beacon (NDB). This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the Dorchester County Airport will change from visual flight rules (VFR) only to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: January 28, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92–ASO–18, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Summerville, SC, Transition Area. An NDB SIAP has been developed to serve the Dorchester County Airport. This proposed action would lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for IFR aeronautical operations. If approved, the operating Status of the airport would change from VFR only to include IFR operations concurrent with publication of the SIAP. Transition areas are published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1 The coordinates for this airspace docket are based on North American Datum 83. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ASO SC TA Summerville, SC [New]

Dorchester County Airport, SC
(lat. 33°03'49" N, long. 80°16'46" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dorchester County Airport.

* * * * *

Issued in East Point, Georgia, on November 9, 1992.

James G. Walters,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92–29893 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 34, 35, 41, 131, 292, 294, 382, and 385

[Docket No. RM92–12–000]

Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978

December 4, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Errata; Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing public utilities and qualifying facilities (57 FR 55176, November 24, 1992). The Appendix showing FERC Form No. 556 was not published with the text of the proposed rulemaking. The following form is being published in the **Federal Register**, but will not be codified in the Code of Federal Regulations.

DATES: An original and 14 copies of written comments on the proposed rule must be filed with the Commission on or before January 15, 1993.

ADDRESSES: Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–0400.

SUPPLEMENTARY INFORMATION: The following Appendix was inadvertently omitted in copies of the proposed rulemaking submitted to the **Federal Register**.

Lois D. Cashell,

Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix

FERC Form No. 556
OMB No. 1902–0075
Expires _____

Application for Certification of Qualifying Facility Status as a Small Power Production Facility or Cogeneration Facility

(To be completed for the purpose of demonstrating conformance with qualification criteria of section 292.203(a) or section 292.203(b))

General instructions:

1. Part A of the form should be completed by all applicants.
2. Part B applies to small power production facilities.
3. Part C applies to cogeneration facilities.

Part A—General Information to be Submitted by all Applicants (Items 1–6)

1a. Full name of applicant:
1b. Full address of applicant:
1c. Indicate the owner (including the percentage of ownership by any electric utility or by any electric utility holding company, or by any persons owned by either) and the operator of the facility:
1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant:
2. Person to whom communications regarding the application may be addressed:
Name:
Title:
Telephone:
Mailing address:
3a. Location of facility to be certified:
State:
County:
City or town:
Street address (if known):
3b. Indicate the electric utility which will purchase and/or wheel the qualified power:
4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their interrelated operation.
4b. Indicate the maximum gross and maximum net electric power production capacity of the facility on a stand alone basis and show the derivation. (The net output of the facility is its send out after the subtraction of the power (whether generated internally or purchased) used to operate the auxiliary equipment in the facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output.)
4c. Indicate the actual or expected installation and operation dates:
4d. Describe the primary energy source (in the case of a small power production facility, specification of an energy source for which the Commission has not established a generic standard in § 292.202(b) requires additional documentation):
5. Provide the 12-month average energy input in terms of Btu, and the percentage of the total annual energy input, of the facility regarding the use of:
Natural Gas:
Oil:
Coal:
Other (including waste fuel):
6. Discuss any particular characteristic of the facility which the applicant believes might bear on its qualifying status.

Part B—Description of the Small Power Production Facility (Items 7–8)

7. Demonstrate how the use of any fossil fuel will meet the requirements of section 3(17)((B) of the Federal Power Act, *i.e.*, that such uses will not exceed 25 percent of total annual energy input and will be limited to ignition, startup, testing, flame stabilization, and control uses, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.
8. If the facility in this application is not an eligible small power production facility, and if any other non-eligible small power production facility located within one mile of the facility in this application is owned by the entities (or their affiliates) shown in item 1 above and uses the same primary energy source, provide the following information about the other facility:
Facility name (as filed with the Commission):
Qualifying facility ("QF") docket number (as assigned by the Commission):
Name of common owner:
Common primary energy source:
Power production capacity (in MW):

Part C—Description of the Cogeneration facility (Items 9–12 apply to all cogeneration facilities. Items 13–14 apply to topping-cycle facilities. Item 15 applies to bottoming-cycle facilities.)

9. Describe the cogeneration system, including whether the facility is a topping- or bottoming-cycle facility.

10. Provide, as Attachment A, a mass and heat balance (cycle diagram for each mode of operation (*e.g.*, multiple thermal hosts over a period of time) showing the physical arrangement of system components, interconnecting energy consecutive 12-month hourly facility inputs and outputs, including:

All fuel flow inputs (Btu/hr) separately indicating inputs for any supplementary firing:

Net electric output (KW or MW):

Net mechanical output (hp):

Number of hours of operation used to determine the average consecutive 12-month hourly facility output:

Working fluid (*e.g.*, Steam) conditions at input and output flow of prime mover(s) and at delivery to and return from each useful thermal application (thermal applications which use steam at the same pressure and temperature may be treated as one application):

Flow rates (lbs/hr):

Temperature (deg. F):

Pressure (psia):

Enthalpy (Btu/lb):

11. Compute the operating values (if applicable) and efficiency values (if applicable) based on the information provided in item 10.

12. Provide the annual useful power output in equivalent Btu showing the corresponding net electric energy output (kW/yr) and, if any, the net mechanical energy output (horsepower/yr.):

For Topping-Cycle Cogeneration Facilities (Items 13–14)

13. Provide a description of the heating and cooling uses and/or the industrial or commercial process for which the thermal energy output is applied.

14a. Useful Thermal Energy Output for heating and cooling uses:

Provide the projected consecutive 12-month average hourly useful thermal energy output (Btu) in terms of the integrated usage, accounting for hourly and seasonal variations, and with regard to industrial or commercial thermal applications, the inefficiencies of the heating and cooling equipment:

For each process use (*i.e.*, process or processes utilizing the same steam pressure and temperature):

Provide the consecutive 12-month average hourly thermal energy output sent to process less delivery losses and less any energy return (heat or condensate return) from process in terms of:

Enthalpy (Btu/lb):

Pressure (psia):

Temperature (deg. F) of working fluids that deliver the thermal output to process and of any return from process:

Average annual flow rate (lbs/hr):

14b. To determine the qualifiable electric power output in a proposed configuration where supplementary firing causes production of additional electrical power in a nonsequential manner, (*e.g.*, a combined cycle configuration with a condensing steam turbine) provide that portion of the total annual electric output from the steam turbine which is the result of any supplementary firing (Btu):

For Bottoming-Cycle Cogeneration Facilities (Item 15)

15. Provide a description of the industrial or commercial process to which the energy input to the system is first applied and from which the reject heat is then used for power production.

[FR Doc. 92–29864 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Hearings

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

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously submitted amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated September 18, 1992, (Administrative Record No. KY–1180) Kentucky resubmitted a proposed program amendment that revises their proposed hearing regulations as amended during the Kentucky regulation promulgation process under Kentucky Revised Statutes (KRS) Chapter 350. The proposed amendment includes regulation changes to Kentucky Administrative Regulations (KAR) at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, and 405 KAR 12:020 that relate to hearings. This proposed amendment supplements an earlier proposed program amendment (Administrative Record No. KY–1170) submitted July 28, 1992. This proposed amendment also includes the statement of consideration that addresses public comments received by Kentucky during the State regulation promulgation process.

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

DATES: Written comments must be received on or before 4 p.m. on December 24, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on December 21, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 21, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503–2922. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922, Telephone: (606) 233–2896

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register**

(47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated September 18, 1992, (Administrative Record No. KY–1180) Kentucky resubmitted a proposed program amendment that revises their proposed hearing regulations as amended during the Kentucky regulation promulgation process. This proposed amendment supplements an earlier proposed program amendment (Administrative Record No. KY–1170) submitted July 28, 1992. This resubmission is the same as the July 28, 1992, submittal except for the following changes made during the State regulation promulgation process. The changes are as follows:

1. 405 KAR 7:001 Section 1(28) amends the definition of "final order."
2. 405 KAR 7:091 Section 1 is being amended by adding the term "provide" which had been inadvertently omitted from the discussion of public participation.
3. 405 KAR 7:091 Section 3(5)(b) is added to provide that the hearing officer recommend the amount of a civil penalty based exclusively on the record of the administrative hearing.
4. 405 KAR 7:091 Section 9 is being amended by removing the terms "not a party and is", in describing who may serve a subpoena.
5. 405 KAR 7:092 Section 2 is being amended by adding the term "provide" which had been inadvertently omitted from the discussion of public participation.
6. 405 KAR 7:092 Section 6(1)(c)1 is being amended to correct a typographical error by changing the term "of" to "or."
7. 405 KAR 7:092 Section 9(4) is being amended to change the timing for filing an answer or other responsive pleading.
8. 405 KAR 7:092 Section 11(5) is being amended by changing the term "validity" to "the propriety."
9. 405 KAR 7:092 Section 12 is being amended by modifying the temporary relief procedures.
10. 405 KAR 7:092 Section 15(4) is being amended by changing the term "office" to "hearing officer."
11. 405 KAR 12:020 Section 5(1) was amended with minor editorial changes.

This proposed amendment also includes the statement of consideration that addresses 91 public comments received by Kentucky during the State regulation promulgation process.

III. Public Comment Procedures

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

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on December 21, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

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

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

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

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-29696 Filed 12-8-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Utah's proposed rules pertain to backfilling and grading operations and the reclamation of highwalls, including safety and stability requirements for retained highwalls and highwall remnants, remining operations and underground mining operations commenced before and continued after August 3, 1977, and coal mining requirements regarding highwall reclamation and approximate original contour (AOC). The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. December 24, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette, NW., suite 1200, Albuquerque, NM 87102. Telephone: (505) 766-1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180-1203. Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated April 30, 1992, Utah submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. UT-758). Utah submitted the proposed amendment in response to a January 9, 1991, letter that OSM sent to Utah in accordance with 30 CFR 732.17(c) (Administrative Record No. UT-607). The provisions of the Utah Coal Mining Rules that Utah proposed to amend are: R645-100-200, definition of "highwall;" R645-301-553.100 and 130, backfilling and grading; R645-301-553.210 and 220, spoil and waste; R645-301-553.260, refuse piles; R645-301-553.510, 520, and 521, previously mined areas; and R645-301-553.620 through 655, approximate original contour.

OSM published a notice in the June 2, 1992, **Federal Register** (57 FR 23181) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. UT-767). The public comment period ended July 2, 1992.

During its review of the amendment, OSM identified concerns regarding Utah Coal Mining Rules R645-301-553.130, regrading requirements and the static safety factor for retained highwalls; R645-301-553.650, highwall retention criteria; and R645-301-553.651, allowable height and length standards for retained highwalls. OSM notified Utah of the concerns by letter dated September 16, 1992 (Administrative Record No. UT-779).

Utah responded in a letter dated September 30, 1992, by submitting additional explanatory information and a revised amendment (Administrative Record No. UT-788).

In the revised amendment, Utah proposes to include in its rules at R645-301-553.130 and 523 requirements for highwall and highwall remnant stability and demonstrations by the operator of stability and safety. Under these rules, an operator would be required to (1) demonstrate that retained highwalls and highwall remnants do not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevent slides, or (2) provide an alternative criterion to establish that the highwall remnant or retained highwall is stable and does not pose a hazard to the public health and safety.

At R645-301-553.510, 520, and 521, Utah proposes that remining operations on previously mined areas and on underground mining operations, which were conducted prior to August 3, 1977, the effective date of SMCRA, contain a preexisting highwall, and continued to operate afterward, would be granted a variance from coal mining regulations requiring complete highwall elimination when the volume of all reasonably available spoil within the permit area is demonstrated by an operator to Utah, in writing, to be insufficient to completely backfill the reaffected or enlarged highwall.

At R645-301-553.650 and 652, Utah proposes that a retained highwall will be considered to be consistent with Utah's approximate original contour (AOC) rules and will not require a variance when the operator establishes that the retained highwall replaces a preexisting cliff or similar natural premining feature and resembles the

structure, composition, and function of the natural cliff it replaces or enhances.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

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

IV. Procedural Determinations

Executive Order 12291

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-29694 Filed 12-8-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-92-29]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana State Legislature, pursuant to Concurrent Resolution No. 102 of the 1992 Regular Session, and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulations governing the operation of two pontoon drawbridges across the Gulf Intracoastal Waterway, Louisiana, as follows:

The State Route 384 Grand Lake Bridge, Gulf Intracoastal Waterway mile 231.4, Calcasieu Parish, Louisiana.

The State Route 384 Black Bayou Bridge, Gulf Intracoastal Waterway mile 237.5, Calcasieu Parish, Louisiana. The proposed change would require the draws to open on a signal, except from 6 a.m. to 8 a.m. and from 2 p.m. to 4 p.m., Monday through Friday except holidays, when the draws would not need to be opened for the passage of vessels. Presently, the draws are required to open on signal at all times.

DATES: Comments must be received on or before January 25, 1993.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and CDR D. G. Dickman, project attorney.

Discussion of Proposed Regulation

There is no vertical clearance for the bridges, since they are pontoon bridges. Navigation through the bridges consists of barge tows, commercial fishing vessels, and recreational craft.

Data submitted by the LDOTD show that for the State Route 384 Grand Lake Bridge, the number of vessels that passed the bridge between the hours of 6 a.m. and 8 a.m. during the past year was as follows: 1053 annual total/87.7 monthly average/2.9 daily average, or an average of 1.5 vessels per hour. Vessels that passed the bridge between the hours of 4 p.m. and 6 p.m. during the past year were as follows: 1084 annual total/90.3 monthly/3.0 daily, or an average of 1.5 vessels per hour.

The number of vehicles that crossed the bridge between the hours of 6 a.m. and 8 a.m. during a recent 10-weekday tabulation was as follows: 1490 total, or 74.5 vehicular crossings per hour. Vehicles that crossed the bridge between the hours of 4 p.m. and 6 p.m. were as follows: 1394 total, or 64.5 vehicular crossings per hour.

Data submitted show that for the State Route 384 Black Bayou Bridge, the number of vessels that passed the bridge between the hours of 6 a.m. and 8 a.m. during the past year was as follows: 822 annual total/68.5 monthly average/2.3 daily average, or an average of 1.15 vessels per hour. Vessels that passed the bridge between the hours of 4 p.m. and 6 p.m. during the past year were as follows: 972 annual total/81.0 monthly average/2.7 daily, or an average of 1.35 vessels per hour.

The number of vehicles that crossed the bridge between the hours of 6 a.m. and 8 a.m. during the same 10-weekday tabulation is as follows: 578 total, or 29 vehicular crossings per hour. Vehicles that crossed the bridge between the hours of 4 p.m. and 6 p.m. were as follows: 733 total, or 37 vehicular crossings per hour.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be minimal and thus a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated periods there will be little inconvenience to vessels using the waterway. Mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the regulated periods should involve little expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of the National Environmental Policy Act, Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.451 is amended by redesignating existing paragraph (f) as paragraph (g), and by adding new paragraph (f) as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(f) The draws of the SR 384 Grand Lake Bridge, mile 231.4, and the SR 384 Black Bayou Bridge, mile 237.5, shall open on signal; except that the draws need not be opened for the passage of vessels Monday through Friday except holidays from 6 a.m. to 8 a.m. and from 2 p.m. to 4 p.m.

* * * * *

Dated: November 24, 1992.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–29750 Filed 12–8–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 921110–2310]

Northeast Multispecies Fishery

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

ACTION: Proposed specification of 1992/1993 gear requirements in the northern shrimp fishery; request for comments.

SUMMARY: NMFS requests comments on the New England Fishery Management Council's (Council) recommendation to specify gear requirements for vessels fishing for northern shrimp in the Northeast multispecies fishery during the 1992/1993 fishing season. The Council has recommended that vessels fishing for northern shrimp in the U.S. Exclusive Economic Zone (EEZ) be required to install and use a finfish excluder device throughout the fishing season. The intent of this recommendation is to reduce the bycatch of groundfish in the small-mesh northern shrimp fishery. Comments are requested on this recommendation as well as suggestions for alternatives.

DATES: Comments on this notice must be received on or before January 8, 1993.

ADDRESSES: Comments may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Shrimp Gear Requirements".

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst, Northeast Region, NMFS), 508–281–9252.

SUPPLEMENTARY INFORMATION: The regulations implementing Amendment 4 (56 FR 24724, May 31, 1991) to the Fishery Management Plan for the

Northeast Multispecies Fishery (FMP) included a measure which allows the Council to recommend to the Director, Northeast Region, NMFS (Regional Director), gear requirements for vessels fishing for northern shrimp. The purpose of the measure is to allow for a process to require fishing gear that will reduce the bycatch and subsequent discard of regulated groundfish in the northern shrimp fishery. The northern shrimp fishery is fished with nets containing small mesh which can be effective in taking groundfish. The Council has identified that several of the groundfish species are being overfished and is trying to reduce fishing mortality on these species.

The measure, contained in § 651.20(b)(3) requires the Council, in consultation with the Atlantic States Marine Fisheries Commission (Commission), to review annually information on shrimp gear technology and make a recommendation, if appropriate, to the Regional Director. The recommendation must be made by July 15 each year. Accompanying the recommendation, the Council is required to provide an economic analysis of the impacts imposed by the proposed gear specification. The Regional Director is then required to publish the recommendation in the **Federal Register** and allow for comments before making a decision on the recommendation.

The Commission currently develops regulations for the northern shrimp fishery in the coastal waters under the jurisdiction of its members states. The Commission annually specifies the fishing season and gear requirements which are to be implemented by its member states. The Council's involvement with fishing activities for northern shrimp is through the management of groundfish bycatch through the Exempted Fishery Program (§ 651.22) of the Northeast Multispecies FMP. The Exempted Fishery Program (EFP) allows the use of mesh of less than the regulated size in a portion of the Regulated Mesh Area (§ 651.20). The EFP was developed to manage the bycatch of regulated groundfish that can occur with the use of small mesh nets. One of the restrictions of the program is that a vessel operator must declare which target species the vessel will be fishing for. The amount of target species landed then determines the amount of regulated groundfish bycatch allowed. Northern shrimp is one of the target species in the EFP. The EFP combined with permitting requirements associated with the FMP automatically incorporates what the Commission specifies for the northern shrimp fishery.

At the Council's urging, the Commission, through its member states, has in recent years implemented gear requirements such as large-mesh panels in the net (separator trawls) in an attempt to reduce the bycatch and resultant discard mortality from the shrimp fishery. During the 1990/91 fishing season and again in the 1991/92 season, NMFS, with the support of the Council, conducted field tests on a finfish excluder device called the Nordmore grate. The grate is being used in Norway and Canada with encouraging results.

The Nordmore grate is a device that typically has a rectangular frame with parallel bars of fixed spacing. To install it into the net, several components are necessary: (1) A funnel of net material is installed in the lengthening piece of the net; (2) the grate is attached to the net and is located in back of the funnel with a backwards slope of approximately 48 degrees; (3) an opening is cut in the top of the net above the grate; and (4) floats are attached along the grate to neutralize the weight. The catch in the net is directed to the lower portion of the grate through the funnel in the lengthening piece. Shrimp and small fish that are able to pass through the grate are retained in the codend. Larger fish are directed up and out of the net by the combination of the grate and the opening in the top of the net.

The field tests were conducted on commercial vessels in various locations and times during the fishing season. The tests incorporated grates with different bar spacings (¾ inch (1.91 cm) and 1 inch (2.54 cm)) as well as grates of different material (aluminum and ultrahigh molecular weight polyethylene). The tests included control nets and evaluated the retention of shrimp, the retention of other species, the fishing characteristics of the system and the handling of the catch and finfish excluder device system on deck. The outcome of the tests was favorable regarding the retention of shrimp, the quality of the shrimp landed and the reduction of groundfish bycatch. There were some handling difficulties with the aluminum grate that resulted in the grate being damaged or warped after several tows. With the polyethylene grate, this type of damage did not occur.

Based upon these results, the Commission, through its member states, implemented a finfish excluder device requirement for the time period April 1 through May 15 of this year. Approximately 70 vessels purchased the grate for use in this period.

The Multispecies Oversight Committee of the Council and the Council continued discussions on the finfish excluder device. At its July meeting, the Council received the economic analysis prepared by the Council staff to support implementation of a finfish excluder device. The results of the economic analysis are summarized below:

Economic Analysis

The analysis considered several of the possible costs and benefits based upon the Nordmore grate's use in the northern shrimp fishery. The benefits include a potential increase in landings to fishermen targeting for groundfish as a result of a reduction in mortality of finfish that have not reached a marketable size. The costs include an estimate of the loss of landings of selected species of legal size finfish to some fishermen targeting for northern shrimp and the cost of purchasing the finfish excluder device.

Sea sampling data from shrimp trips was combined with catch data from the Nordmore grate field tests to estimate the potential net benefits from requiring a Nordmore grate with 1-inch bar spacing to be used in the northern shrimp fishery. The analysis concluded that the potential benefits from reducing discard mortality are significant enough that the use of the finfish excluder device clearly would have positive economic benefits for fishermen, processors and consumers.

Short-term annual costs include a reduction of landings of finfish of marketable size (monkfish, cod, winter flounder, American plaice, silver hake) by shrimpers estimated to be worth about $622,000. This amount represents 13 percent of the total ex-vessel revenues from the shrimp fishery in 1991.

The installation cost is estimated to be between $850 to $1,000 dollars per vessel. These costs could be amortized over a 2-year period to match the expected life of the gear. There were 357 vessels that participated in the shrimp fishery based upon the issuance of permits for the Exempted Fishery Program. The total annual cost to the shrimp fleet of buying and using the grate would be about $151,725 to $178,500.

The most important benefit to the harvesting sector from requiring a finfish excluder device would be the reduction in mortality of finfish that have not reached a marketable size. Many of the fish that are currently caught in shrimp trawls are discarded at sea at a very small size. If these fish were not retained by the trawl gear,

many would grow to a marketable size. Although a 1-inch bar spacing in the finfish excluder device does not exclude the smallest finfish, it does enable a significant number to escape the shrimp trawl gear and contribute to commercial landings at a later time. The analysis estimates that a grate with 1-inch bar spacing would increase potential landings in the groundfish fishery of several selected species (cod, winter flounder, American plaice, silver hake, and red hake) by about 3.2 million pounds with an annual dockside value of about $2.5 million. Reducing the discard reduces the fishing mortality on these species which will increase the spawning biomass and contribute to a healthier groundfish fishery.

It was reported and observed in the field tests that there was an improvement in the quality of shrimp from using the finfish excluder device. This, coupled with a decrease in the amount of culling time required to separate the shrimp catch from the catch of finfish, argued for requiring the use of the device.

A finfish excluder device requirement will cause a distribution of benefits away from vessels in the shrimp fishery towards vessels that are in the groundfish fishery. The redistribution of benefits will be more severe for those relatively few vessels that do not switch to groundfishing after the shrimp season has ended.

Council Recommendation

Comments by the public at the July Council meeting focused on the need to implement the finfish excluder device throughout the season and throughout all areas. Statements were received that indicated that there is little or no bycatch occurring in certain areas off the coast of Maine during the January through March time period. A comment was also received that it would be necessary to have two finfish excluder devices to allow for a replacement net should a net or finfish excluder device system be damaged or lost.

After having reviewed the results of the economic analysis and the comments received, the Council approved a motion that:

> Any vessel catching, harvesting or landing northern shrimp be required to use a finfish excluder device, particularly the Nordmore Grate, with a rigid or semi-rigid bar spacing of not more than one inch (2.54 cm) throughout the shrimp season except in those state waters determined to be subject to little or no bycatch.

The motion was forwarded to the Regional Director as the Council's recommendation for the 1992/1993 northern shrimp fishery.

Proposed Preliminary Specification

Comments are requested on the Council's recommendation for preliminary specification of gear and will be accepted until January 8, 1993. Based upon the issues raised by the public at the July Council meeting, specific comments are also requested on other alternatives such as the need to implement the excluder device, the need for the device throughout the season, the adequacy of existing bycatch limits as a means to control groundfish bycatch, and the need to implement the device throughout all areas. The Regional Director will consider comments received on the Council's recommendation and suggested alternatives before making a final decision.

Classification

This action complies with Executive Order (E.O.) 12291 and the Regulatory Flexibility Act (RFA). The economic analysis in the EA/RIR/IRFA prepared by the Council for this action determined that estimated benefits resulting from increased potential landings of groundfish would have an annual dockside value of $2.5 million. The benefits are derived from allowing finfish to reach marketable size rather than being caught and discarded.

The proposed specifications, if adopted, could have a significant effect on a substantial number of small entities. The costs associated with this action to fishermen who target primarily for northern shrimp result from the short-term reduction of groundfish landings worth an estimated $622,000 and the cost of installation of the finfish excluder device totalling up to $178,500 based on amortized costs for 357 vessels.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-base enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an environmental assessment for this action which discusses the impact on the environment as a result of this rule. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

The Regional Director has determined that this action will not affect any endangered species and that there is no need for further consultation pursuant to Section 7 of the Endangered Species Act of 1973, as amended. Shrimp trawl operations in the Gulf of Maine are not known to entrap or otherwise encounter endangered species under the jurisdiction of the National Marine Fisheries Service.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

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

Dated: December 2, 1992.

Samuel W. McKeon,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-29733 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 658

[Docket No. 912119-2319]

RIN 0648-AE49

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This proposed rule would seasonally modify the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing. This action would enable fishermen to harvest marketable-sized shrimp during specified periods from three small areas that otherwise would be closed.

DATES: Written comments must be received on or before January 19, 1993.

ADDRESSES: Copies of Amendment 6, which includes a Regulatory Impact Review (RIR) and an Environmental Assessment (EA), may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. Comments on the proposed rule should be sent to

Michael E. Justen, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelope "Shrimp Amendment 6."

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 6 to the FMP proposes to establish the seasonal opening of three small areas within the Tortugas shrimp sanctuary, as has been done in each of the last 3 years by regulatory amendments.

Under the FMP, the Director, Southeast Region, NMFS (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at 50 CFR 658.22 after (1) consultation with the Council; (2) consideration of specified criteria; and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger, more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings. When the sanctuary was partially opened in 1983/84, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a finding strongly supported by public testimony. Fisherman contend that shrimp from within this portion of the sanctuary migrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 6 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in the shrimp fishery is more a function of environmental forces than of overfishing. Opening areas of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimp fishermen to obtain a more valuable catch per unit of effort.

The Council determined that small portions of the sanctuary that periodically contain harvestable shrimp should be opened for varying lengths of time during the period April 11 through September 30, each year. The areas proposed to be opened are less than 10 percent of the geographical scope of the sanctuary. These openings will increase the benefits to fishermen by optimizing the yield of shrimp. This geographic modification is consistent with Objective 1 of the FMP because it provides economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

The areas to be opened and their periods of opening in this proposed rule are identical to the areas and periods opened in 1990, 1991, and 1992. They were selected to avoid conflict between lobster trap and shrimp trawl fishermen operating out of the Florida Keys and are consistent with an informal agreement between these two groups of fishermen. This proposed rule would formalize that agreement and make it apply to trawl fishermen not otherwise privy to it, such as trawl fishermen from other areas who may fish seasonally in the area of the Tortugas shrimp sanctuary.

The three areas proposed to be opened are along the edge of the Tortugas shrimp sanctuary north of the Marquesas Keys from northeast of Smith Shoal Light to New Ground Shoal Light (see figure 1 at 50 CFR 658.22). The middle area of approximately 25 square nautical miles would be open to trawling from April 11 through September 30, each year. The western area of approximately 5 square nautical miles would be open from April 11 through July 31, each year. The eastern area of approximately 33 square nautical miles would be open from May 26 through July 31, each year. These areas and time frames will allow fishermen to harvest marketable-size shrimp from areas that would otherwise be closed, while still allowing trap fishermen to harvest spiny lobster from areas customarily available to them.

Amendments 1 and 4 to the FMP require NMFS to monitor the effect of the sanctuary and provide the Council with a report of its findings by July 15, each year. Amendment 6 would eliminate the requirement for an annual report; though NMFS would continue to monitor the effect of the sanctuary and would notify the Council of any changes in its findings.

Overfishing of White Shrimp

Amendment 6 contains a definition of overfishing, a discussion of recruitment overfishing, and action to be taken in the event of recruitment overfishing, all applicable to white shrimp. The Secretary of Commerce (Secretary) has disapproved these measures because the definition of overfishing is not scientifically justified.

Additional information on the disapproved measures and on the proposed changes to the Tortugas shrimp sanctuary is contained in Amendment 6, the availability of which was announced in the **Federal Register** on November 23, 1992 (57 FR 54965). A more detailed discussion of the reasons for disapproval of the white shrimp measures is contained in that **Federal Register** notice.

Minority Report

A minority report submitted by four members of the Council objected to the overfishing definition for white shrimp and to the removal of three items from an earlier, public hearing draft of Amendment 6—a proposal to require permits for vessels fishing for shrimp in the exclusive economic zone, a proposal previously authorized by the Council that would have required mandatory reporting of catch and landings by selected shrimp fishermen and dealers, and a proposal to require selected shrimp fishing vessels to carry an observer to record bycatch. Although the data that would be generated from these programs are needed, the Council removed the programs from Amendment 6 in recognition that NMFS has insufficient funding to implement them at this time.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined whether the changes to the Tortugas shrimp sanctuary contained in Amendment 6, which this proposed rule would implement, are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. As discussed earlier, the Secretary has already disapproved the white shrimp overfishing definition contained in Amendment 6, because of insufficient scientific justification. The Secretary, in making determinations about the Tortugas shrimp sanctuary will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why

it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an RIR that concludes that this rule is not expected to have any significant economic effects on fishermen because it makes permanent the changes to the Tortugas shrimp sanctuary that have been in effect for the last 3 years. A copy of the RIR, which also evaluates the economic effects of the other measures contained in Amendment 6, is available from the Council (see ADDRESSES).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Because the measures proposed in this rule do not directly affect the gross revenues or production costs of the shrimp harvesting industry or demand a significant increase in compliance or capital costs, such measures would not have a significant economic impact; and, because the geographical area affected by the rule is small, the number of shrimp trawlers affected in the Gulf-wide fishery would not be substantial. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. A copy of the EA is available and comments on it are requested (See ADDRESSES).

Amendment 1 to the FMP authorizes the Regional Director, under specified conditions and restrictions, to modify the boundaries of the Tortugas shrimp sanctuary, as is being proposed in this rule. When Amendment 1 was approved, a determination was made that such modifications would be consistent to the maximum extent practicable with the approved coastal zone management program of Florida, the only state affected by this rule. Consequently, a new consistency determination under the Coastal Zone Management Act is not required.

A consultation conducted in accordance with section 7 of the Endangered Species Act (ESA) on Amendment 6 concluded that operation of the fishery is not likely to jeopardize endangered or threatened sea turtles. This determination is based on the assumption that the draft final ESA rule currently under preparation by NMFS will be implemented by December 1, 1992.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 3, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is proposed to be amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

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

2. In § 658.22, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding—

(1) Effective from April 11 through September 30, each year, that part of that Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point T at 24°47.8′N. latitude, 82°01.0′W. longitude to point U at 24°43.83′N. latitude, 82°01.0′W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′N. latitude, 82°15.0′W. longitude; thence north to point W at 24°43.6′N. latitude, 82°15.0′W. longitude (see Figure 1).

(2) Effective from April 11 through July 31, each year, that part of the tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point W to point V, both points as specified in paragraph (b)(1) of this section, to point G, as specified in paragraph (a) of this section (see Figure 1).

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F, as specified in paragraph (a) of this section, to point Q at 24°46.7′N. latitude, 81°52.2′W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (b)(1) of this section (see Figure 1).

* * * * *

[FR Doc. 92-29883 Filed 12-4-92; 3:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 237
Wednesday, December 9, 1992

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Announces Requests for Applications for Training Programs

The Europe Bureau of the U.S. Agency for International Development, through Partners for International Education and Training (PIET), is soliciting applications for cooperative agreements and grants exclusively addressing training needs in Central and Eastern Europe.

These awards will be made to institutions who propose to offer quality short-term (average 3–5 months but could be from 4 weeks to 1 year) technical training programs to Europeans from the following CEE countries: Albania, Bulgaria, the Czech and Slovak Republics, Estonia, Hungary, Latvia, Lithuania, Poland, and Romania. Long-term program leading to an academic degree will not be considered.

Proposed programs MUST focus on Support for Eastern Europe Democracy (SEED) Act Legislation priority training areas: Economic Restructuring, Democratic Institution Building, and Quality of Life. Although all of the three categories will be considered, a specific amount (33%) of the total award funds ($2 million) will be set aside exclusively for quality programs which provide training in Public Administration.

Sharing costs will be a critical element for all grants/cooperative agreements, and must include a minimum of 50% cost sharing by the awardee in administration costs and/or training program costs for applications to be considered. These costs may be in-kind or cash. Participant allowance rates must be in compliance with A.I.D. Handbook 10 rates and regulations.

Program quality, impact, appropriateness, and cost-sharing are the main factors which will determine awards. Total funding amounts requested from A.I.D. in your application should range from $50,000 to $250,000, excluding amounts which will be cost-shared. However, depending on the factors outlined above, and specifically listed in this package, smaller funding requests will also be considered.

Training programs should be held in the United States. However, training in U.S.-owned institutions in CEE countries will be considered. Historically Black Colleges and Universities (HBCUs), two-year colleges and consortia are encouraged to apply.

The application packet is available without fee on FEDIX on-line database by modem at 1–800–783–3349 or 301–258–0953 (local) using parameters 8–N–1; or by Internet at address: fedix.fie.com. The packet is available by the A.I.D. downloadable filename PTPE.*. FEDIX helpline telephone number: (301) 975–0103.

Applications are due January 29, 1993. If additional information is required, please contact Bev Frannea, Program Officer, or Colin Davies, Director, Participant Training Project for Europe (PTPE), Partners for International Education and Training, Tel: 1–800–252–7883 or local (202) 223–4291 Fax: (202) 223–4289.

Dated: December 3, 1992.

John Batelle,

Project Officer, Bureau of Europe, Agency for International Development.

[FR Doc. 92–29767 Filed 12–8–92; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Alabama Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to an action it may take pertaining to a proposal by Alabama Electric Cooperative to modify its McWilliams Electric Generating Plant (McWilliams Repowering Project).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed project involves retiring the three existing boilers at Alabama Electric Cooperative's McWilliams Plant and installing a 100 megawatt (MW) Kraftwerk Union Model V84.2 combustion gas turbine generator. The exhaust gas from the combustion gas turbine will be fed to a single pressure, heat recovery steam generator which will power the three existing steam turbine generators that will be left at the plant. The steam turbine generators will have an output of approximately 43 MW. The total output of the repowered plant will be 144 MW. All construction will be within the existing McWilliams Plant boundaries.

Alternatives considered to the project as proposed included no action, constructing various types of new facilities, constructing similar facilities at locations other that the McWilliams Plant, and purchasing power.

REA has prepared an environmental assessment of the McWilliams Repowering Project and has concluded that this action will have no significant impact on the quality of the human environment and has subsequently reached a FONSI.

Copies of the environmental assessment and FONSI can be obtained from, and are available for review at, REA at the address provided herein, or Alabama Electric Cooperative, Highway 29 North, Andalusia, Alabama 36420, telephone (205) 222–2571. Copies are also available for review at the Andalusia Public Library, South Three Notch Street, Andalusia, Alabama.

There will be a 30-day period which will begin on either the date this notice is published in the **Federal Register** or a similar notice has been published in *The Andalusia Star-News*—whichever is later. Those wishing to comment on the FONSI should do so within this 30-day comment period to ensure their comments are taken into consideration prior to REA's final action related to the project. REA will take no action that would approve clearing or construction activities prior to the expiration of the 30-day comment period. Comments should be sent to REA at the address given in this notice.

Dated: November 30, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-29793 Filed 12-8-92; 8:45 am]

BILLING CODE 3410-15-F

Forest Service

Douglas Timber Harvest Analysis; Stikine Area Tongass National Forest, Petersburg, Alaska, Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal that will provide up to 70 MMBF of timber that will contribute towards meeting market demands in Southeast Alaska for timber products. The proposed action will be timber harvest and road construction within management area S20 (Totem) and part of management area S13 (Value Comparison Unit 435) located on the southern part of Kupreanof Island in southeast Alaska. Eighty percent of approximately 139,200 acres has been allocated by the Tongass Land Management Plan to Land Use Designation (LUD) IV. The primary emphasis of LUD IV is the management of resources for commodity values. The remainder of the area (28,160 acres) is in LUD III. The LUD III area emphasis is management for a variety of uses, both commodity and amenity to provide the greatest combination of benefits. The number of acres harvested may be up to 8750 acres (6 percent of the area).

A range of alternatives for this project will be developed, including a No Action alternative and a preferred alternative. Since no commodities would be produced with the No Action alternative and the demand for wood products is currently high in the Stikine Area, other locations may be selected to provide this resource if the No Action alternative is selected.

The nature of the decision to be made is whether and how to make timber from Management Area S20 available for the demands of Southeast Alaska and also provide for other resource demands both currently and continuously. The Stikine Area Forest Supervisor will decide:

1. The amount of timber harvested,
2. The location and design of harvest units,
3. The location and design of the road system and log transfer site, and
4. Mitigation measures associated with each alternative.

This Notice of Intent is the beginning of the scoping process. Scoping letters will be sent to agencies and individuals that have expressed an interest in similar projects in the Stikine Area. Local public meetings may be arranged if scoping indicates a need. This will provide opportunities for input and review by other agencies and the public throughout the National Environmental Policy Act process.

A Draft EIS is projected to be issued approximately 9 months (or July of 1993) after this Notice. A Final EIS is planned for October 1993.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 533 [1978]). Also, environmental objections that could have been raised at the Draft EIS stage may be waived if not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is the Stikine Area Forest Supervisor, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Questions and written comments and suggestions concerning the analysis at this time should be sent to Cynthia Sever, Team Leader, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833 (phone 907-772-3871).

Dated: November 10, 1992.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 92-29787 Filed 12-8-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12 noon, on January 7, 1993 at the Alexis Park, 375 East Harmon, Las Vegas, Nevada. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Margo Piscevich, or Philip Montez, Director of the Western Regional Office, (213) 894-3437, TDD (213) 894-0508. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, December 1, 1992.

Carol-Lee Hurley,

Chief, Regional Program Coordination Unit.

[FR Doc. 92-29786 Filed 12-8-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-401-004]

Carton Closing Staples and Stapling Machines From Sweden; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: the Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on carton closing staples and stapling machines from Sweden. Interested parties who object to this revocation must submit their comments in writing no later than December 31, 1992.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-0090.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1983, the Department of Commerce ("the Department") published an antidumping duty order on carton closing staples and stapling machines from Sweden (48 FR 38250). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than December 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-29906 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-091]

Large Electric Motors From Japan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on large electric motors from Japan. Interested parties who object to this revocation must submit their comments in writing no later than December 31, 1992.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Dave Mason or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-2923.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1980, the Department of Commerce ("the Department") published an antidumping duty order on large electric motors from Japan (45 FR 84994). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than December 31, 1992, interested parties, as defined in 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-29907 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-046]

Polychloroprene Rubber From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of it intent to revoke the antidumping finding on polychloroprene rubber from Japan. Interested parties who object to this revocation must submit their comments in writing no later than December 31, 1992.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Melissa Skinner, Officer of Antidumpng Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4851.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1971, the Department of Treasury published an antidumping finding on polychloroprene rubber from Japan (38 FR 33593). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than December 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–29908 Filed 12–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on porcelain-on-steel cooking ware from Taiwan. Interested parties who object to this revocation must submit their comments in writing no later than December 31, 1992.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4851.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department of Commerce ("the Department") published an antidumping duty order on porcelain-on-steel cooking ware from Taiwan (51 FR 43416). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than December 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–29909 Filed 12–8–92; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Brazil

December 3, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 300/301, 317/326 and 350 are being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21971, published on May 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1992 and extends through March 31, 1993.

Effective on December 10, 1992, you are directed to amend further the May 19, 1992 directive to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the

United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit
300/301	6,070,089 kilograms.
317/326	[1] 16,783,905 square meters.
350	113,749 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-29827 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 3, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6713. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, by application of swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 2712, published on January 23, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 10, 1992, you are directed to amend further the directive dated January 14, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
350	66,754 dozen.
352/652	1,814,633 dozen.
633	36,746 dozen.
634	314,868 dozen.
635	311,773 dozen.
643	532,322 numbers.
647/648	764,196 dozen.
650	81,956 dozen.
Group II	
200-229, 300-326, 330, 332, 349, 353, 354, 359-O [2], 360, 362, 363, 369-O [3], 400-414, 432, 434-442, 444, 448, 459, 464-469, 600-607, 613-629, 630, 632, 644, 653, 654, 659-O [4], 665, 666, 669-O [5], 670-O [6], 831-846 and 850-859, as a group.	98,070,143 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359-C).

[3] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[4] Category 659-O: all HTS numbers except 6108.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6060, 6505.90.7090 and 6505.90.8090 (Category 659-H).

[5] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-29904 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 3, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6716. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 635 are being increased for swing, reducing the limits for Categories 341 and 634 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 63501, published on December 4, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 10, 1992, you are directed to amend further the directive dated November 27, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Singapore:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	1,059,266 dozen of which not more than 578,546 dozen shall be in Category 338 and not more than 643,270 dozen shall be in Category 339.
341	159,013 dozen.
634	242,111 dozen.
635	281,558 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-29905 Filed 12-8-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF ENERGY

Notification of Wetlands Involvement for the Proposed Clean Coal Technology Project at the Milliken Station, Units 1 and 2, New York State Electric and Gas, Town of Lansing, NY

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of wetlands involvement.

SUMMARY: Under the Clean Coal Technology Program, DOE proposes to provide cost-shared funding support to a project entitled, "Milliken Station Clean Coal Technology Demonstration Project," that would be located at New York State Electric & Gas Corporation's (NYSEG) Milliken Station, Units 1 and 2, in the Town of Lansing, New York. The purpose of the project is to demonstrate technologies that would reduce the plant's sulfur dioxide (SO_2 and nitrogen oxide (NO_x) emissions. In accordance with 10 CFR part 1022 (DOE's "Compliance With Floodplains/ Wetlands Environmental Review Requirements"), DOE has determined that this proposed project would involve activities within wetland areas. Therefore, this Notice of Wetlands Involvement is issued for public review and comment.

In accordance with 10 CFR part 1022, DOE will prepare a wetlands assessment for the wetlands that would be affected by the proposed project at the Milliken Station site. The wetlands assessment will be incorporated into the environmental assessment to be prepared for this proposed Clean Coal Technology demonstration project.

COMMENT PERIOD: Written comments or questions concerning the project should be directed to the address noted below. Comments are due no later than December 24, 1992.

ADDRESSES: Karen M. Khonsari, Environmental Specialist, Pittsburgh Energy Technology Center, U.S. Department of Energy, MS-920L, P.O. Box 10940, Pittsburgh, PA 15236. Tel. (412) 892-6106, Fax (412) 892-4604.

FOR FURTHER INFORMATION CONTACT: For general information on DOE wetlands review requirements, or for information on the environmental assessment required by the National Environmental Policy Act (NEPA), please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The proposed project would be conducted at NYSEG's Milliken Station, Units 1 and 2, in the Town of Lansing, New York. Milliken Station is situated on a 1,100 acre parcel of land on the eastern shore of Lake Cayuga, approximately 14 miles northeast of Ithaca. The Milliken Station electric generating system includes two pulverized coal-fired boilers, Units 1 and 2, rated nominally at 150 megawatts-electric (MWe) each. Both units would be utilized in the proposed Clean Coal Technology demonstration project.

The proposed project is a combination of several technologies designed to reduce SO_2 and NO_x emissions. A formic acid enhanced flue gas desulfurization (FGD) system would be installed in the base of a new 374-foot stack and would incorporate a tile-lined split module absorber. This FGD system is designed to reduce SO_2 emissions from both Units 1 and 2. A by-product of the FGD system would be a marketable, commercial-grade gypsum. A selective non-catalytic reduction (SNCR) system would be installed on Unit 2. The SNCR system, consisting of urea injection into the post-combustion zones of the Unit 2 boiler, is designed to reduce NO_x emissions. Low NO_x burners and windboxes, also designed to reduce NO_x emissions, would be installed on both Units 1 and 2.

The proposed FGD system would be constructed in an area immediately north of the existing plant. A complex of wetlands that was developed by NYSEG during the 1970s is located further north, outside of the boundaries of the proposed FGD system site area. This wetlands complex, about 10 acres in size, is characterized by open water, marsh, and wet meadow, and is heavily used by mallard ducks, Canada geese, and red-winged blackbirds.

Within the entire project area (FGD system site and construction lay-down area) are six wetlands which meet the saturation, vegetation and soil criteria of the U.S. Army Corps of Engineers. Each of the six wetlands is under one acre in size. As a result of the proposed project, possibly four of the six wetlands would be impacted.

Directly within the proposed FGD system site area are four wetlands. In this area, equipment and facilities would be sited so as to avoid impacts to two of these four wetlands. One of the impacted wetlands, 0.05 acre in size, would have its entire acreage affected by a ditch that may need to be excavated through its eastern end, thereby cutting off the east-to-west water flow. NYSEG is working with the New York State Department of Environmental Conservation to avoid impacting this particular wetland. However, should this wetland require excavation, NYSEG would replace this wetland by creating a new wetland of twice the size (0.1 acre) within the wetlands complex.

Another wetland in the proposed FGD system site area, 0.10 acre in size, would be directly impacted due to the construction of a sedimentation basin. The sedimentation basin would be sited to cut through 0.01 acre of the western end of the wetland and would restrict water flow to the westernmost 0.03 acre of the wetland. However, the sedimentation basin itself would be approximately 0.19 acre in size, and

thus, in time, it may thereby increase the overall size of the wetland to 0.25 acre. In the event that the wetland does not increase in size due to the sedimentation basin, and if the entire wetland actually is impacted, then NYSEG has committed itself to create a new wetland of twice the size (0.2 acre) within the wetlands complex.

An area designated by NYSEG as a "construction lay down area" contained two wetlands, one of which was 0.05 acre in size, and the other was 0.01 acre in size. As discussed below, independent of the proposed Federal action, NYSEG currently is constructing an access road. Because of NYSEG's immediate need for a place to park construction vehicles for the access road, the construction lay down area was graded, and both of the wetlands located there were filled in. NYSEG has committed itself to replacing both wetlands by creating a new wetland of twice the size (0.12 acre) within the wetlands complex.

The mitigative creation of wetlands by NYSEG in the ratio of two-to-one for wetlands that would be impacted in the FGD system site area and that are impacted by the construction lay down area will be undertaken at the projected completion of construction in 1994 to allow the required wetland establishment to proceed during the three-year demonstration project. NYSEG has demonstrated its ability to construct high quality wetlands at this site that attract and sustain diverse habitat and animal species. The establishment of native wetland vegetation proceeds rapidly once shallow pools are created. The three-year demonstration will allow documentation of this natural progression in parallel with the technology demonstration.

Independent of the proposed Federal action, NYSEG is constructing an access road within the boundaries of their property that will directly impact six wetlands, all of which meet the saturation, vegetation, and soil criteria of the Corps of Engineers, along with an intermittent stream. The construction of this access road is an independent activity undertaken wholly by NYSEG. DOE is not involved in the decisionmaking process, or in the funding, design, or construction of the access road. This construction will be completed prior to the commencement of construction of the proposed NYSEG demonstration project, and will be completed regardless of DOE's funding support for the project. Accordingly, comments related to the wetlands involvement due to the access road should be directed to NYSEG and/or the Buffalo District Office of the Corps of Engineers, not to DOE. However, as a service to the interested reader, brief descriptions of the access road construction, the six affected wetlands, and the affected intermittent stream, follow:

The existing facility access road is located off Milliken Station Road, which intersects with New York State Route 34B about one mile east of the project site. In the past, concern has been raised to NYSEG and to the New York State Department of Transportation regarding the safety of this intersection due to limited sight distances. In order to improve traffic safety in the vicinity of the Milliken Station, NYSEG is in the process of constructing an access road that will intersect Route 34B at a location south of the existing intersection that will provide for longer and safer sight distances. The new access road will start at Route 34B and proceed across two streams and an adjacent wetland before forming a new intersection with Milliken Station Road. The adjacent wetland is actually located in one of the stream beds and is about 0.29 acres in size. The construction of the access road will impact 0.22 acres of this wetland.

The access road will then proceed from the new intersection along a transmission line corridor, crossing through a field and a wooded area before reaching the Milliken plant. Along this portion of the access road, five wetlands with acreage totalling 1.03 acres will be directly impacted. Although NYSEG has sited the road to minimize impact, the total acreage of the five wetlands in this section of the access road that will be directly impacted is about 0.67 acre. Hence, the cumulative impact to wetlands associated with construction of the access road is a total of 0.89 acre.

As for the intermittent stream that will be impacted by the access road, the stream will be diverted from its present course into another stream located outside of the project area. After the diversion, a portion of the original intermittent stream bed will be excavated for use as fill in one of the ravines, and the remainder of the bed will be filled in. This intermittent stream was studied for potential impacts along its entire length, and it was determined that no wetlands are present in the intermittent stream or along its banks.

NYSEG has submitted a report to the Corps of Engineers regarding the total amount of wetlands impacted. The Corps has issued Nationwide Permit #14 for the filling of the five wetlands, totalling 0.67 acre, located along the portion of the access road between the plant and the new intersection with the existing access road. For the portion of the access road between the new intersection with the existing access road and the new intersection with Route 34B, the Corps has issued Nationwide Permit #26 for two stream crossings and adjacent wetlands totalling 0.22 acre. NYSEG expects to complete construction of the access road in November 1992.

DOE has attended a meeting between NYSEG and the Corps regarding the affected wetlands, and is incorporating the decisions made by the Corps into the wetlands assessment being prepared by DOE as a part of the environmental assessment for this proposed project.

Maps and additional information are available from PETC as provided in the ADDRESSES section of this Notice.

Signed in Washington, DC, this 2nd day of December 1992, for the United States Department of Energy.

James G. Randolph,

Assistant Secretary for Fossil Energy.

[FR Doc. 29910 Filed 12-8-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-149-000, et al.]

Central Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 2, 1992.

Take notice that the following filings have been made with the Commission:

1. Central Power and Light

[Docket No. ER93-151-000]

Take notice that on November 16, 1992, Central Power and Light Company (CPL) tendered for filing a supplement to the Interchange Agreement between CPL, South Texas Electric Cooperative, Inc. (STEC) and Medina Electric Cooperative, Inc. (MEC), dated February 6, 1979 (CPL FERC Rate Schedule No. 63). The supplement consists of the following documents:

1. First Addendum to Facilities Schedule dated August 25, 1980;
2. Second Addendum to Facilities Schedule dated June 29, 1981;
3. Third Addendum to Facilities Schedule dated October 16, 1981; and
4. Fourth Addendum to Facilities Schedule dated September 28, 1989.

CPL requests that such addenda be made effective as supplements to CPL's FERC Rate Schedule No. 63 as of the respective dates listed above and accordingly asks for waiver of the Commission's notice requirements.

Copies of the filing have been served on STEC and MEC and on the Public Utility Commission of Texas. Copies of this transmittal letter only have been sent to CPL's other wholesale customers, Magic Valley Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., the City of Robstown, Texas and the Public Utilities Board of the City of Brownsville, Texas to notify them of the request for waiver of the Commission's notice requirements.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER93-154-000]

Take notice that on November 17, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing 31 Agreements in response to the Commission's "Supplemental Order Rescinding Refund Obligation and Announcing Additional 30-Day Amnesty Period for the Filing of Jurisdictional Agreements Involving Contributions in Aid of Construction" issued October 13, 1992 in Docket No. ER92-183-002. The Commission offered public utilities 30 additional days, calculated from the date of publication of its order in the **Federal Register**, in which to file with the Commission any now-unfiled CIAC agreements under which jurisdictional service currently is, or has been, provided. The Agreements tendered for filing are between PG&E and the following Parties: the City and County of San Francisco, the California State Department of Water Resources, the Fine Arts Museum of San Francisco, Midway-Sunset Cogeneration Company, the Port of Oakland, the Sacramento Municipal Utility District, the San Francisco Municipal Railway, the South Sutter Water District, the Transmission Agency of Northern California, the Turlock Irrigation District, the United States Fish and Wildlife Service, the United States Department of the Navy, and the Western Area Power Administration.

Copies of this filing have been served upon the parties on the service list including the CPUC.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER93-158-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to construction, operation, maintenance, ownership or interconnection of facilities by Puget or Weyerhaeuser Company (Company). A copy of the filing was served upon the Company.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER93-157-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to construction, operation, maintenance, ownership or interconnection of facilities by Puget or PacifiCorp. A copy of the filing was served upon PacifiCorp.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER93-174-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC Nos. 12 or 63 or construction, relocation, operation, maintenance or ownership of facilities by Puget or Bonneville Power Administration (Bonneville). A copy of the filing was served upon Bonneville.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93-159-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 16 or construction, relocation, operation, maintenance or ownership of facilities by Puget or Bonneville Power Administration (Bonneville). A copy of the filing was served upon Bonneville.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Company

[Docket No. ER93-175-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for Firm Power Purchase" between Puget and San Juan Energy Company, and "Agreement for Firm Power Purchase" between Puget and March Point Cogeneration Company (Collectively, the Agreements), containing provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon March Point Cogeneration Company.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER93-172-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, "Agreement for the Purchase of Power" between Puget and South Fork Resources, Inc. (the Agreement) and "Assignment and Assumption Agreement (Power Purchase Agreement)" between South Fork Resources, Inc. and Twin Falls Hydro Associates, L.P., dated as of November 9, 1989. The Assignment contains provisions for construction of facilities, power purchase by Puget or parallel operation of facilities. A copy of the filing was served upon Twin Falls Hydro Associates, L.P.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Company

[Docket No. ER93-160-000]

Take notice that on November 17, 1992, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 79 or construction, operation, maintenance or ownership of facilities by Puget or Public Utility District No. 1 of Whatcom County (District). A copy of the filing was served upon the District.

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Philadelphia Electric Company

[Docket No. ER93-155-000]

Take notice that on November 17, 1992, Philadelphia Electric Company (PE) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Delmarva Power & Light Company (DPL) and PE dated November 10, 1992. This contract sets forth the terms under which PE will sell PJM installed capacity credits to DPL. In order to maximize the economic advantages to both PE and DPL, PE requests that the Commission waive its customary notice period and permit this Agreement to become effective on November 18, 1992.

PE states that a copy of this filing has been served by mail upon DPL, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland

Public Service Commission, and the Virginia State Corporation Commission

Comment date: December 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29818 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Greenville Dam Project, FERC No. 2441-009; and Tenth Street Hydro Station Project, FERC No. 2508-002]

City of Norwich, CT; Availability of Environmental Assessment

December 3, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR, part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for subsequent minor licenses for the Greenville Dam Project and the Tenth Street Hydro Station Project, located on the Shetucket River, in New London County, near Norwich, Connecticut, and has prepared a combined environmental assessment (EA) for the two projects. In the EA, the Commission analyzes the potential environmental impacts of the projects and concludes that approval of the proposed projects, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29849 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-83-000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co

[Docket No. CP93-83-000]

December 1, 1992.

Take notice that on November 27, 1992, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93-83-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate certain existing delivery point facilities for activities subject to the Natural Gas Act, under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it constructed a number of delivery taps under section 311(a) of the Natural Gas Policy Act of 1978 exclusively for use in the transportation of natural gas under Subpart B of part 284 of the Commission's Rules and Regulations. El Paso makes reference to the Commission's Order No. 537-A issued September 21, 1992, and requests authorization to operate under the Natural Gas Act the delivery taps listed below.

Delivery point	Location
Howard County Delivery Point	Howard County, TX.
Mobil Waha Delivery Point	Pecos County, TX.
Amoco Levelland Plant Delivery Point No. 1	Hockley County, TX.
Amoco Levelland Plant Delivery Point No. 2	Hockley County, TX.
Amoco Slaughter Plant Delivery Point	Hockley Count, TX.
Energas Delivery Point	Potter County, TX.
La Paz Pump Meter Station Delivery Point	La Paz County, AZ.
Gila Pump Meter Station Delivery Point	Maricopa County, AZ.
Coolidge Pump Meter Station Delivery Point	Pinal County, AZ.
Tom Mix Pump Meter Station Delivery Point	Pinal County, AZ.
Hot Springs Pump Meter Station Delivery Point	Cochise County, AZ.
Lordsburg Pump Meter Station Delivery Point	Hidalgo County, NM.
Anthony Pump Meter Station Delivery Point	Dona Ana County, NM.
Salt Flats Pump Meter Station Delivery Point	Hudspeth County, TX.
Meridian Oil Inc. Wingate Plant Fuel Delivery Point	McKinley County, NM.

Comment date: January 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. South Georgia Natural Gas Co.

[Docket No. CP93-72-000]

December 1, 1992.

Take notice that on November 20, 1992, South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed an application with the Commission in Docket No. CP93-72-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission to abandon its interruptible service for direct sale to Occidental Chemical Corporation (Occidental), all as more

fully set forth in the application which is open to the public for inspection.

South Georgia states that it previously sold natural gas on an as-available basis to Occidental at its plant near White Springs, Florida, under a direct sales agreement which terminated effective October 1, 1992. However, South Georgia states, Occidental would continue to satisfy its gas requirements through open-access transportation of third party supplies. Accordingly, South Georgia states it requests authority to abandon the sales service effective October 1, 1992. It is stated that no facilities would be abandoned.

Comment date: December 22, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP93-78-000]

December 1, 1992.

Take notice that on November 25, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93-78-000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon a certificated transportation service for Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that MRT purchases gas from certain leases located in the North Reydon Field, Hemphill County, Texas and Roger Mills County, Oklahoma. K N also states that MRT delivers the above-mentioned purchased gas to K N at a point of interconnect between their facilities located in Roger Mills County, Oklahoma. K N indicates that it has the right, but not the obligation, to purchase 12.5 percent of the volumes received from MRT. It is then stated that K N transports the remaining volumes of gas for MRT and redelivers the gas to Panhandle Eastern Pipe Line Company at the Aledo Plant, Dewey County, Oklahoma. It is indicated that the transportation service has been provided under the terms of K N's Rate Schedule T-3. K N states that by letter dated July 30, 1992, MRT requested that the transportation agreement be terminated effective November 1, 1992, and that K N provide replacement transportation service under K N's part 284 blanket certificate. No abandonment of facilities is proposed.

Comment date: December 22, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. Colorado Interstate Gas Co. and Ralston Processing Associates, Inc.

[Docket No. CP93-71-000]

December 1, 1992.

Take notice that on November 20, 1992, Colorado Interstate Gas Company, (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, and Ralston Processing Associates, Inc. (Ralston) 1751 Franklin Street, P.O. Box 18348, Capitol Hill Station, Denver, Colorado 80218 filed in Docket No. CP93-71-000 respectively, a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG and Ralston state that they propose to abandon the Gas Exchange Agreement (Agreement) dated October 31, 1985, constituting CIG's Rate Schedule X-65 of its FERC Gas Tariff, Original Volume No. 2. This rate schedule provides for the exchange of natural gas supplies to compensate for the gas lost in the processing operation from Ralston's Oregon Basin Plant. It is also stated that the Agreement is no longer required as Ralston no longer operates the Oregon Basin Processing Facility.

CIG further states that it does not propose to abandon any facilities as a result of the authorization requested.

Comment date: December 22, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Equitrans, Inc.

[Docket No. CP93-80-000]

December 2, 1992.

Take notice that on November 27, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP93-80-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a sales tap under the authorization issued in Docket No. CP83-508-000 [1] pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans states that the proposed sales tap is to be installed on its Transmission Line F-821 in Weston, West Virginia. It is stated that the tap will be instituted to permit gas service to Ms. Alma Bailey of Weston, West Virginia. Equitrans states that the customer will be served by Equitable and Equitable will be charged the applicable rate contained in Equitrans' tariff on file with and approved by the Commission. Equitrans projects that the quantity of gas to be delivered through the proposed sales tap will be approximately one Mcf on a peak day.

Comment date: January 19, 1993, in accordance with Standard Paragraph G at the end of this notice.

[1] Equitable states that the blanket certificate was issued to Equitable Gas Company, a division of Equitable Resources (Equitable). On January 20, 1988, in Docket No. CP86-676, the Commission approved the transfer of Equitable's blanket certificate to its newly formed affiliate, Equitrans.

6. Petal Gas Storage Co.

[Docket No. CP93-69-000]

December 2, 1992.

Take notice that on November 18, 1992, Petal Gas Storage Company ("Petal"), a Delaware corporation with an office at 1301 McKinney, Houston, Texas 77010, filed in Docket No. CP93-69-000 pursuant to section 7 of the Natural Gas Act and part 157 and subpart G of part 284 of the Commission's Regulations an application for a certificate of public convenience and necessity authorizing it to construct and operate natural gas storage and related facilities and to render firm and interruptible contract storage service, and for a blanket certificate authorizing self-implementing storage service with pregranted abandonment authority, all as more fully set forth in the application on file with the Commission and open to public inspection.

Petal Gas Storage Company is a wholly-owned subsidiary of Chevron U.S.A. Inc. ("Chevron"). Chevron is leaching a cavern in the Petal Salt Dome in Forrest County, Mississippi. Petal proposes to lease from Chevron fifty percent of the working gas capacity in the cavern and to construct the necessary compression, dehydration, and pipelines necessary to inject and withdraw gas from the cavern and to tie-in the facilities to Tennessee Gas Pipeline Company and United Gas Pipe Line Company transportation lines. Petal will perform injection and withdrawal service for Chevron and will offer open access storage services to third parties. Petal will provide services to Chevron under the General Terms and Conditions of Petal's Tariff and Rate Schedule FSS, except that Chevron will not be required to pay a Storage Capacity Charge, since Chevron will be using its own storage capacity in the cavern.

Petal will have 1.6 Bcf of storage capacity which can be filled by Petal's customers in as little as twenty days and withdrawn by Petal's customers in as

little as ten days. Petal will hold an open season in the first quarter of 1993, tentatively scheduled to commence on January 20, 1993, to allocate its storage capacity to interested customers. Petal proposes to offer its storage services at market-based rates. No cost data or revenue projections were submitted with this proceeding, because Petal is requesting a waiver of those Commission Regulations requiring said submission.

Comment date: December 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29804 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-01324T; Texas-91]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 2, 1992.

Take notice that on November 27, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Cisco-Canyon Sand underlying portions of Sterling County, Texas, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is within Railroad Commission District 8 and consists of the following acreage:

H & TC RR. Co., Blk. 22, Sections 11, 13, 14 and 15
T & P RR. Co., TWP 5-S, Blk. 31, Sections 2 and 3
T & P RR. Co., TWP 5-S, Blk. 32, Section 12
H & TC RR. Co., Blk. 21, Sections 2, 3, 4 and 9
S.P. RR Co., Blk. 13, Section 34
P. Kendall Survey, Section 6 ABST. 309
J.B. Hiler Survey, West most 200 acres, Section 7
Geo. Eyers Survey, Section 5, Blk. A, CERT. 823, ABST. 53
Paul J. Witkins Survey, Section 3, Blk. A, CERT. 286, ABST. 611

The notice of determination also contains Texas' findings that the referenced portions of the Cisco-Canyon Sand meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29810 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD 93-01152T Texas-88]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 3, 1992.

Take notice that on November 24, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg 11 Sand Formation underlying a portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area covers approximately 3,344.51 acres in portions of the Ygnacio Flores A-725 and Nicolasa Salinas A-411 surveys in east central Starr County, Texas.

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg 11 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29847 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-01153T Texas-89]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 3, 1992.

Take notice that on November 24, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg 20 Sand Formation underlying a portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The

designated area covers approximately 3,304.51 acres in portions of the Ygnacio Flores A–725 and Nicolasa Salinas A–411 surveys in east central Starr County, Texas. The area specifically excludes the area within boundaries assigned to the T.B. Slick No. 71 proration unit.

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg 20 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29848 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–01325T Texas–92]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 3, 1992.

Take notice that on November 27, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Strawn Formation underlying a portion of Hood County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is within Railroad Commission District 7B and includes the following surveys:

Survey/Abstract

W. Conklin; A–94
R. Towers; A–556
R. Perry; A–437
B.T. West; A–599
L. Boatwright; A–33
W. Hunter; A–227

The notice of determination also contains Texas' findings that the referenced portion of the Strawn Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29863 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–01154T Texas–90]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 3, 1992.

Take notice that on November 24, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg 24 Sand Formation underlying a portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area covers approximately 3,344.51 acres in portions of the Ygnacio Flores A–725 and Nicolasa Salinas A–411 surveys in east central Starr County, Texas.

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg 24 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29865 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 1, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, as set forth in the revised tariff sheets that are proposed to be effective January 1, 1993:

Third Revised Volume No. 1

1 Rev 16 Rev Sheet No. 21
1 Rev 16 Rev Sheet No. 22
1 Rev 16 Rev Sheet No. 26
1 Rev 16 Rev Sheet No. 27
1 Rev 16 Rev Sheet No. 28
1 Rev Sub 3 Rev Sheet No. 43
1 Rev Sub 3 Rev Sheet No. 61
2 Rev Sub 4 Rev Sheet No. 64
1 Rev Sub 4 Rev Sheet No. 66
1 Rev Sub 2 Rev Sheet No. 67
1 Rev Original Sheet No. 68
Third Revised Sheet No. 653
Original Sheet No. 653A

Original Volume No. 2

1 Rev Sub 2 Rev Sheet No. 334

Algonquin states that these revised tariff sheets are being submitted to reflect the interim funding mechanism for the Gas Research Institute ("GRI") as more fully stated in Section 28 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin further states that this method was approved by the Commission's Order on Proposed Funding Mechanism issued August 28, 1992 in Docket No. RP92–133–000.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92–29868 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that ANR Pipeline Company ("ANR"), on December 1, 1992 tendered for filing the following

tariff sheets which ANR proposes to become effective January 1, 1993:

First Revised Volume No. 1

Second Revised Sheet No. 6
First Revised Sheet No. 33
First Revised Sheet No. 78
Original Sheet No. 78A
Original Sheet No. 78B
First Revised Sheet No. 79

First Revised Volume No. 1-A

Second Revised Sheet No. 4
First Revised Sheet No. 14
First Revised Sheet No. 30

Original Volume No. 2

Eighteenth Revised Sheet No. 22
Fifth Revised Sheet No. 1698
Fourth Revised Sheet No. 1769
Fourth Revised Sheet No. 1784

Original Volume No. 3

Fifteenth Revised Sheet No. 5
Fifth Revised Sheet No. 14

ANR states that these tariff sheets are being submitted to place into effect Gas Research Institute ("GRI") surcharges and the terms and conditions under which such surcharges will be collected and remitted to GRI for the purposes of funding its 1993 research and development program. As more fully described in its filing, the tariff sheets reflect an agreement between ANR and GRI for purposes of funding the 1993 GRI research and development program which conforms to the Modified Funding Mechanism approved by the Commission in its Order issued August 28, 1992 at Docket No. RP92-133-000.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing via. U.S. Mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, NE., Washington, DC 20426 by December 10, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29876 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF93-1-22-000, TM93-2-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on November 30, 1992, filed the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

To be effective December 1, 1992:

Twenty-Fourth Revised Sheet No. 31
Sixteenth Revised Sheet No. 32
Twentieth Revised Sheet No. 34
Fifteenth Revised Sheet No. 35

To be effective January 1, 1993:

Twenty-Fifth Revised Sheet No. 31
Seventeenth Revised Sheet No. 32
Sixteenth Revised Sheet No. 35

CNG states that the purpose of the filing is twofold: (1) To reflect effective on December 1, 1992, an interim reduction in CNG's cost of gas and cost of transportation by others; and, (2) to reflect, effective January 1, 1993, a change in the GRI Surcharge.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before December 10, 1992. 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. 92-29845 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on November 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Ninth Revised Sheet No. 021
First Revised Sheet No. 045

Columbia Gulf states that the aforementioned tariff sheets are being filed to revise the Gas Research Institute (GRI) General RD&D Funding Unit Rates, as authorized by Order issued by the Federal Energy Regulatory Commission (Commission) on August 28, 1992 in Docket No. RP92-133-000, *et. al.*, for the year 1993. By Commission Order Denying Rehearing issued October 28, 1992 in Docket No. RP92-133-002, rehearing was denied and the proposed interim funding unit was confirmed. Under the funding mechanism, Columbia Gulf will continue to collect the GRI volumetric surcharge of 1.47¢ per Dth on all nondiscounted commodity charges and nondiscounted one-part rates for transportation services. Columbia Gulf will also charge a uniform demand or reservation surcharge of eight cents per Dth per month on all firm transportation entitlements. Columbia Gulf is filing revised tariff language in Section 12.01 describing the interim funding mechanism which will be in effect for the year 1993.

Columbia Gulf states that copies of the filing are being mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1992. 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 Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29851 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Twenty-second Revised Sheet No. 26.1
Twenty-second Revised Sheet No. 26A.1
Eighteenth Revised Sheet No. 26B.1
Twenty-sixth Revised Sheet No. 26C
Nineteenth Revised Sheet No. 26D
Second Revised Sheet No. 170

Columbia states that the aforementioned tariff sheets are being filed to revise the Gas Research Institute (GRI) General RD&D Funding Unit Rates for the year 1993, as authorized by Order issued by the Federal Energy Regulatory Commission (Commission) on August 28, 1992 in Docket No. RP92-133-000, *et al.* By Commission Order Denying Rehearing issued October 28, 1992 in Docket No. RP92-133-002, rehearing was denied and the proposed interim funding unit was confirmed. Under the funding mechanism, Columbia will continue to collect the GRI volumetric surcharge of 1.47¢ per Dth on all nondiscounted commodity charges and nondiscounted one-part rates for transportation services, including those associated with bundled sales transactions. Columbia will also charge a uniform demand or reservation surcharge of eight cents per Dth per month on all firm sales and transportation entitlements. Columbia is filing new tariff language in § 21.1(b) describing the interim funding mechanism which will be in effect for the year 1993.

Columbia states that copies of the filing are being mailed to Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29852 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF93-2-2-000 and TM93-3-2-000]

East Tennessee Natural Gas Co.; Rate Filing

December 3, 1992.

Take notice that on November 30, 1992, East Tennessee Natural Gas Company (East Tennessee) submitted for filing five copies each of Second Revised Twenty-Eighth Revised Sheet Nos. 4 and 5 to its FERC Gas Tariff, Volume No. 1 to be effective December 1, 1992. Sheet Nos. 4 and 5 are filed to implement an Interim Purchased Gas Adjustment.

East Tennessee also submits for filing five copies each of the following tariff sheets to its FERC Gas Tariff, Volume No. 1 and 1A to be effective December 1, 1992:

Second Revised Sheet No. 103, Volume 1
Eighth Revised Sheet Nos. 6 and 7, Volume 1A

East Tennessee states that the purpose of the instant filing is to comply with the Commission's order issued on August 28, 1992 in Docket No. RP91-133-000 directing all pipelines to collect Gas Research Institute funding amounts through a demand surcharge on all firm sales and transportation entitlements.

In addition, East Tennessee submits for filing five copies each of the following tariff sheets, to be effective as indicated, reflecting in its Index of Purchasers various changes in contract demand:

Sheet No.	Effective date
Third Revised Sheet Nos. 150 and 152.	Nov. 1, 1992.
Fourth Revised Sheet Nos. 150 and 152.	Dec. 1, 1992.
Third Revised Sheet No. 151 ...	Dec. 1, 1992.
Fourth Revised Sheet No. 151.	Jan. 1, 1992.

East Tennessee further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 10, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition or intervened in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29874 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-214-000 and RP91-188-000]

El Paso Natural Gas Co.; Notice of Informal Settlement Conference

December 2, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, December 16, 1992, at 10 a.m. and may continue through Friday, December 18, 1992, if needed, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to explore the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins (202) 208-0248 or Marc Gary Denkinger (202) 208-2215.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29811 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-10-000, et al.]

El Paso Natural Gas Co.; Filing

In the matter of Docket Nos. GT93-10-000, GT93-11-000, GT93-12-000, GT93-13-000, and GT93-14-000.

December 2, 1992.

Take notice that El Paso Natural Gas Company (El Paso) tendered for filing on November 27, 1992, five superseding service agreements with Town of Mountainair, New Mexico (Mountainair); Capitan-Carrizozo Natural Gas Association (Capitan-

Carrizozo); City of Goldsmith, Texas (Goldsmith); Graham County Utilities, Inc. (Graham); and Village of Corona, New Mexico (Corona).

El Paso states that the superseding service agreement between Mountainair is proposed to be effective December 1, 1992 which is subject to Rate Schedule ABD–1 contained in El Paso's Second Revised Volume No. 1 tariff.

El Paso states that the superseding service agreement between Capitan-Carrizozo, Graham and Corona, are proposed to be effective November 1, 1992 which is subject to Rate Schedule ABD–1 contained in El Paso's Second Revised Volume No. 1 tariff. El Paso states that service agreement between El Paso and Goldsmith is effective November 1, 1992 which is subject to Rate Schedule PA–1 contained in El Paso's Second Revised Volume No. 1 tariff.

El Paso states that the purpose of the instant filing is to implement renegotiated pricing options pursuant to orders issued March 20, 1991, and August 14, 1991, in Docket No. RP88–44–000, *et al.*

El Paso states that copies of the filing are being mailed to all parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 9, 1992. 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 pubic reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–29814 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–24–000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

December 3, 1992.

Take notice that Equitrans, Inc. (Equitrans), on December 1, 1992 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1993.

Original Volume No. 1

Forty-Second Revised Sheet No. 10
Twelfth Revised Sheet No. 23
First Revised Sheet No. 178

Original Volume No. 3

Twelfth Revised Sheet No. 8

Pursuant to Opinion No. 378 in Docket No. RP92–133–001, issued November 16, 1992, the Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The propose tariff sheets are intended to implement that authorization. The 1993 GRI unit surcharge approved by the Commission is $0.0800 per dekatherm (dth) per month demand surcharge and $0.0147 per Dth commodity surcharge. Also, Equitrans is proposing to revise its General Terms and Conditions section 20 of its FERC Gas Tariff, Original Volume No. 1 to collect the GRI surcharge on a demand and commodity basis pursuant to Docket No. RP92–133–001.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective January 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92–29869 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–2–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that on December 1, 1992 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, to become effective January 1, 1993:

Thirty-Fourth Revised Sheet No. 8
Eleventh Revised Sheet No. 8A
Ninth Revised Sheet No. 8B
First Revised Sheet No. 265
First Revised Sheet No. 266

FGT states that the tariff sheets are being filed pursuant to Commission Order in Docket No. RP92–133–001 (Phase I) issued on August 28, 1992 to reflect an interim funding mechanism for GRI's approved 1993 expenditures, and pursuant to Order No. 378 issued November 16, 1992 which approved GRI's 1993 RD&D expenditures. The funding mechanism includes a GRI demand charge of eight cents (8¢) per MMBtu per month (.26¢ per MMBtu stated on the daily demand basis underlying FGT's demand reservation charges) to be applicable to all jurisdictional firm demand billing units and a GRI volumetric charge of 1.47¢ per MMBtu to be applicable to all jurisdictional one-part rates and to the commodity portion of two-part rates to the extent such volumes are not discounted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92–29862 Filed 12–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93-2-51-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on December 1, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1993:

First Revised Volume No. 1

Fifth Revised Sheet No. 56-B
Original Sheet No. 56-B1
Tenth Revised Sheet No. 57(iv)

Original Volume No. 3

Seventh Revised Sheet No. 2
Eight Revised Sheet No. 3

Great Lakes states that the tariff sheets applicable to First Revised Volume No. 1 of its FERC Gas Tariff are being filed to reflect (1) the Gas Research Institute ("GRI") funding unit factors approved pursuant to the Commission's Order on Proposed Funding Mechanism, issued August 28, 1992 in Docket No. RP92-133-000, and (2) modification of Great Lakes' existing GRI Adjustment Charge tariff provisions to reflect appropriate application of the revised GRI funding applicable to Great Lakes' transportation services.

Great Lakes also states that the tariff sheets applicable to Original Volume No. 3 of its FERC Gas Tariff are being filed to reflect the Gas Research Institute ("GRI") funding unit factors approved pursuant to the Commission's Order on Proposed Funding Mechanism, issued August 28, 1992 in Docket No. RP92-133-000

Great Lakes states further that the Commission's Order authorized, *inter alia*, the establishment of a new GRI funding unit to be applicable to the Demand (Reservation) component of pipeline transportation services of 8.0¢ per Mcf per month and the continuation of an existing funding unit of 1.51¢ per Mcf applicable to the Commodity (Utilization) component of such services.

Great Lakes requested that the above tariff sheets become effective January 1, 1993 to coincide with the effective date of the GRI funding unit rates approved per the Commission's Order in the aforementioned docket.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before December 10, 1992.

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. 92-29877 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-99-000]

Kern River Gas Transmission Co.; Rate Filing

December 3, 1992.

Take notice that on December 1, 1992, Kern River Gas Transmission Company ("Kern River"), P.O. Box 2511, Houston, Texas 77252, filed its Third Revised Second Substitute Original Sheet No. 5 for a proposed effective date of January 1, 1993. Kern River states that this filing is in response to the Commission order issued on August 28, 1992 in Docket No. RP92-133-000, in which the Commission directed all pipelines to collect Gas Research Institute (GRI) funding amounts through a uniform reservation charge of $.08 per Mcf per month on all firm transportation entitlements, in addition to the volumetric charge of $.0151 per Mcf on all non-discounted transportation services.

Kern River states that copies of the filing have been mailed to all affected customers and state regulatory Commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 10, 1992. 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. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29854 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that on December 1, 1992, K N Energy, Inc., (K N) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of January 1, 1993:

Fourth Revised Volume No. 1

Fifteenth Revised Sheet No. 4
Fifteenth Revised Sheet No. 4B

First Revised Volume No. 1-A

Sixth Revised Sheet No. 4

K N states that the proposed changes will adjust K N's rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (section 21) of K N's FERC Gas Tariff, First Revised Volume No. 1-B. K N states that such adjustment is to track the revised GRI funding mechanism, effective January 1, 1992, per Commission order dated August 28, 1992 in Docket No. RP92-133-000.

K N states that copies of the filing were served upon K N's jurisdictional 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29850 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-715-000, et al.]

Technical Conference; Liberty Pipeline Co., et al.

December 2, 1992.

In the matter of Liberty Pipeline Co., Docket No. CP92-715-000; Transcontinental Gas Pipeline Corp. Docket No. CP92-721-000; Texas Eastern Transmission Corp. Docket Nos. CP92-716-000 CP92-717-000 CP92-719-000 CP92-720-000; Trunkline Gas Co. Docket No. CP92-718-000; Texas

Gas Transmission Corp. Docket Nos. CP92-730-000 CP92-734-000.

Staff will hold a technical conference in the above-captioned dockets at 10 a.m. on December 17, 1992 at the offices of the Federal Energy Regulatory Commission, Washington DC 20426, at a room to be announced. Topics for discussion will include rates, tariff provisions, environmental concerns, upstream transportation arrangements, markets, supply and other issues that may be raised by participants.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Ron Giusti, 202-208-0839.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29817 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP93-3-000]

Marathon Oil Co.; Petition for a Declaratory Order

December 2, 1992.

Take notice that on November 24, 1992, Marathon Oil Company ("Marathon"), 5555 San Felipe, Houston, Texas 77056-2725, filed a petition requesting the Commission to issue a declaratory order stating that a certain sidetracking operation identified as well B-18 S/T/-2, located in the South Pass Block 89, Offshore Louisiana, is a "newly spudded well" pursuant to the Natural Gas Wellhead Decontrol Act of 1989, Public Law 101-60, 102 Stat. 157 (1989) ("Wellhead Decontrol Act").

Marathon states that Well B-18 S/T-2 is a sidetrack from original well bore B-18. Well B-18 was originally spudded by Marathon on December 18, 1988, prior to the enactment date of the Wellhead Decontrol Act, July 26, 1989. A sidetracked well is developed by using a portion of an existing well casing to drill a second well. Marathon states that Well B-18 was a development/exploratory well, 10,139 feet in depth. It is stated that Well B-18 was nonproductive and produced no hydrocarbons. Marathon states that Well B-18 cost $1.2 million to drill without a completion interval. In addition, it is stated that on January 14, 1989, operations began to permanently abandon Well B-18 and sidetrack at 5,368 feet to a structurally higher target in the R-5 Reservoir as Well B-18 S/T-1.

It is stated that Well B-18 S/T-1 was drilled to a depth of 9,830 feet, perforated from 9,592 to 9,754 feet, and completed as a single gravel packed producer in the R-5 Sand on March 15, 1989. Marathon states that the gross cost to sidetrack Well B-18 S/T-1 was $3.6 million. Marathon also states that Well B-18 S/T-1 depleted in December, 1990 after producing 89,035 bbls. of oil and 183,955 Mcf of natural gas. On January 6, 1991, operations commenced to permanently abandon Well B-18 S/T-1.

Marathon states that subsequently, sidetrack operations were undertaken to the CP-8 reservoir as Well B-18 S/T-2, the specific well at issue herein. Well B-18 S/T-2 was drilled highest on structure with perforations from 8,216 to 8,264 feet, and completed as a single completion with two gravel packed intervals within the CP-8 Reservoir. Marathon notes that Well B-18 S/T-2 was also perforated from 8,425 to 8,482 feet, but is producing only from the 8,216 to 8,264 feet interval. The lower perforations are said to be depleted. Marathon also states that the cost to sidetrack at 3,763 feet, drill to a total depth of 9,955 feet, and complete two intervals in the CP-8 Reservoir was $3.5 million.

Marathon states that Well B-18 S/T-2 meets the criteria for newly spudded well status. Marathon states that operations began to sidetrack Well B-18 S/T-2 in January of 1991, after original Well B-18 and S/T-1 were abandoned. Original B-18 was nonproductive and S/T-1 was depleted.

Marathon states that consideration should be given to the fact that Well B-18 S/T-2 is an offshore well. Marathon states that offshore wells are unique in that they are generally more expensive to drill than onshore wells and that platforms offer limited drilling/production slots. Once all of the drilling slots are used, the only option for drilling a new well is sidetracking. Marathon also notes that the Minerals Management Service, by issuance of a new drilling permit, deemed Well B-18 S/T-2 to be necessary.

In addition, Marathon states that it incurred more than twice the drilling expenses to drill B-18 S/T-2 than it did to drill Original Well B-18, and nearly the equivalent amount of the expense incurred to drill and complete B-18 S/T-1. Finally, Marathon states that Well B-18 S/T-2 has produced approximately 421,625 bbls. of oil and 517,580 Mcf of natural gas through August, 1992 as compared to zero volumes produced from the original Well B-18.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 23, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29815 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-5-000]

Midwestern Gas Transmission Co.; Rate Filing

December 3, 1992

Take notice that on December 1, 1992, Midwestern Gas Transmission Company ("Midwestern"), P.O. Box 2511, Houston, Texas 77252, filed its Fortieth Revised Sheet No. 5, its Twenty-Seventh Revised Sheet No. 6, and its Third Revised Sheet No. 83 for a proposed effective date of January 1, 1993, pursuant to Article XVIII of Midwestern's tariff. Midwestern states that this filing is in response to the Commission order issued on August 28, 1992 in Docket No. RP92-133-000, in which the Commission directed all pipelines to collect Gas Research Institute (GRI) funding amounts through a uniform demand or reservation charge of $.08 per dekatherm (Dth) per month on all firm sales or transportation entitlements, in addition to the volumetric charge of $.0147 per Dth on all non-discounted, one-part rates for transportation services, including those associated with bundled sales services.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of

Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before December 10, 1992. 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. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29875 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-4-001 and 002]

Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1992.

Take notice that on November 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 which are proposed to be effective April 1, 1993:

First Revised Seventh Revised Sheet No. 53
First Revised Tenth Revised Sheet No. 54

MRT states that the tariff sheets are being submitted in compliance with Ordering Paragraph (D) of the Commission's October 30, 1992 suspension order in Docket No. RP93-4-000. MRT states that it has also submitted a study showing the impact by customer and customer class of its proposed change to a Straight Fixed Variable cost classification in compliance with Ordering Paragraph (C) of the Commission's October 30, 1992 order.

MRT states that a copy of this filing has been served on all intervenors on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 9, 1992. 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. 92-29805 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-4-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

December 3, 1992.

Take notice that on November 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Tariff:

Second Revised Volume No. 1

Fourth Revised Eighty-Second Revised Sheet No. 4
Fourth Revised Forty-First Revised Sheet No. 4.1
Fourth Revised Sheet No. 70

Original Volume No. 1-A

First Revised Tenth Revised Sheet No. 2
First Revised Tenth Revised Sheet No. 3
First Revised Fifth Revised Sheet No. 4

MRT states that the tariff sheets reflect the Gas Research Institute's (GRI) surcharge of 1.47 cents per MMBtu on all commodity charges and one-part rates for transportation services, and a surcharge of 8 cents per MMBtu per month on all firm sales or transportation entitlements in accordance with the Commission's Order issued August 28, 1992, at Docket No. RP92-133-000 (Phase I).

MRT states that a copy of the revised tariff sheets is being mailed to each of its jurisdictional customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1992. 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. 92-29872 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-4-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

December 3, 1992.

Take notice that on November 30, 1992, Mississippi River Transmission Corporation (MRT) tendered for filing Third Revised Eighty-Third Revised Sheet No. 4 and Third Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective December 1, 1992.

MRT states that the purpose of the out-of-cycle filing is to request waiver of the Commission's regulations, in particular § 154.305(d) and § 154.308(c), in order to suspend the application of MRT's commodity Annual Surcharge Adjustment credit of 9.42 cents per MMBtu for the remainder of the Annual Surcharge Period, and to allow MRT to reflect a decrease of 1.43 cents per MMBtu in the commodity cost of purchased gas from PGA rates effective December 1, 1992 in Docket No. TQ93-2-25-000. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 10.85 cents per MMBtu in the CD-1 and SGS-1 commodity charge.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1992. 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. 92-29873 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-36-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that on December 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A to the filing with a proposed effective date of January 1, 1993.

Natural states that the purpose of this filing is to comply with Article IX of Natural's Stipulation and Agreement on Transition Cost Recovery at Docket Nos. RP91-22, RP91-31 and CP89-1281, et al., which Article requires Natural to file a general rate case on December 1, 1992. Natural states that the filing reflects a 15% equity return allowance, increased depreciation rates for onshore transmission and storage facilities from 2.27% to 2.75% and 2.38% to 3.6%, respectively, increased levels of operating costs, and the continuation of the modified fixed-variable rate design.

Natural states that in addition, it included a pro forma set of rates in the filing which reflect the straight fixed-variable rate design, changed transportation zone boundaries, the reclassification of gathering facilities to transmission, market-based rates for interruptible transportation and short-term firm transportation, and the design of Rate Schedules S-1, LS-2 and LS-3 storage rates on a comparable basis with rates for open access storage services. Natural has requested that these changes coincide with the implementation of Order No. 636 on its system.

Natural states that copies of the filing was mailed to each of Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29870 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Northern Natural Gas Company (Northern) on December 1, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Fourth Revised Volume 1, the following tariff sheets, proposed to be effective January 1, 1993:

First Revised Sheet No. 252
First Revised Sheet No. 253

Northern states that such tariff sheets are being submitted in compliance with the Commission's Opinion No. 378, Approving Gas Research Institute's (GRI) 1993 Program, issued on November 16, 1992 in Docket No. RP92-133-001.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before December 10, 1992. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29853 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-35-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 3, 1992.

Take notice that on November 30, 1992, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Second Revised Twentieth Revised Sheet No. 10
Second Revised Nineteenth Revised Sheet No. 11
First Revised Fourteenth Revised Sheet No. 13

First Revised Volume No. 1-A

First Revised Fifteenth Revised Sheet No. 201

Northwest states that the purpose of this filing is to update its Commodity SSP Surcharge effective January 1, 1993, to reflect (1) seventy-five percent of SSP costs associated with one supplier settlement, (2) interest applicable to October, November and December 1992, and (3) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.24¢ per MMBtu for the three months commencing January 1, 1993. The tariff sheets listed above also reflect the current Commission approved commodity and demand GRI surcharges to be effective for the twelve months commencing January 1, 1993. The commodity funding unit shall remain at 1.47¢ per MMBtu. The demand surcharge, as set forth on Sheet Nos. 10 and 201, shall be 8¢ per MMBtu.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods, including the three months beginning January 1, 1993, should Northwest ultimately be successful in its court appeals.

Northwest states that a copy of the non-confidential portion of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December

10, 1992. 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. 92-29871 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-74-000]

Pacific Offshore Pipeline Co.; Notice of Conference

December 2, 1992.

Take notice that on Thursday, December 17, 1992, a conference will be convened in the captioned restructuring docket to discuss Pacific Offshore Pipeline Company's proposed plan to implement Order No. 636.

The conference will be held at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, beginning at 10 a.m. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may call Michael Goldenberg at (202) 208-2294.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29812 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-73-000]

Pacific Interstate Offshore Co.; Notice of Conference

December 2, 1992.

Take notice that on Friday, December 18, 1992, a conference will be convened in the captioned restructuring docket to discuss Pacific Interstate Offshore Company's proposed plan to implement Order No. 636.

The conference will be held at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, beginning at 10 a.m. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may call Michael Goldenberg at (202) 208-2294.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29813 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-6-002, 003]

Paiute Pipeline Co.; Compliance Filing

December 2, 1992.

Take notice that on November 27, 1992, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheet to be a part of its FERC Gas Tariff, First Revised Volume No. 1-A:

Substitute Third Revised Sheet No. 10

Paiute states that the purpose of this filing is to comply with the Commission's order issued October 30, 1992 in Docket Nos. RP93-6-000 and RS92-75-000 et al., wherein the Commission accepted and suspended certain tariff sheets subject to refund, and the conditions set forth in said order. In compliance with Ordering Paragraphs (C) and (E) of the Commission's October 30, 1992 order, Paiute submits herewith the following: (1) The revised tariff sheet necessary to reflect the impact of costs allocated to interruptible transportation service based on a projected level of service, as discussed in said order; and (2) a study showing the impact of Paiute's proposed change in rate design on each of Paiute's customers. Paiute has requested an effective date of April 1, 1993 for the tendered sheet.

Paiute states that copies of its filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 9, 1992. 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. 92-29807 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that on December 1, 1992 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Ninety-Fourth Revised Sheet No. 3-A
Eight Revised Sheet No. 3-A.1
Seventy-First Revised Sheet No. 3-B
Eighteenth Revised Sheet No. 3-B.1
Seventeenth Revised Sheet No. 3-F
Twelfth Revised Sheet No. 3-G
Tenth Revised Sheet No. 3-H
Tenth Revised Sheet No. 3-I
Second Revised Sheet No. 3-K
First Revised Sheet No. 32-Z.01
First Revised Sheet No. 32-BC.02
Third Revised Sheet No. 32-CV
Fourth Revised Sheet No. 43-05

FERC Gas Tariff, Original Volume No. 2

Eighteenth Revised Sheet No. 2731
Fourth Revised Sheet No. 2731.1
Fourteenth Revised Sheet No. 3010

The proposed effective date of these tariff sheets is January 1, 1993.

Panhandle states that such filing reflects a rate adjustment pursuant to an Order on Proposed Funding Mechanism issued August 28, 1992 in Docket No. RP92-133-000 (Phase I). Ordering Paragraph (A) of that Order provides that jurisdictional members of Gas Research Institute (GRI), such as Panhandle, may file a general R&D cost adjustment to be effective January 1, 1993. This adjustment will permit the collection of a volumetric surcharge of 1.47 cents per Dt. and a reservation surcharge of 8 cents per Dt. from all firm sales and transportation customers.

Panhandle states that copies of this filing have been served on all affected customers subject to the applicable tariff sheets and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29846 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-68-015]

Penn-York Energy Corp.; Filing of Motion to Place Into Effect Revised Tariff Sheets

December 2, 1992.

Take notice that Penn-York Energy Corporation ("Penn-York"), on November 27, 1992, submitted for filing, pursuant to section 4(e) of the Natural Gas Act, as amended, section 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place into effect the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, as of December 1, 1992, subject to refund:

Substitute Fourth Revised Sheet No. 8
Substitute Second Revised Sheet No. 9
Substitute Fourth Revised Sheet No. 17

Penn-York states that copies of this filing were served upon the company's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 9, 1992. 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. 92-29808 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-149-000]

Southern California Edison Co.; Filing

December 2, 1992.

Take notice that on November 16, 1992, Southern California Edison Company (Edison) tendered for filing the following supplemental agreements to the 1990 Integrated Operations Agreements (1990 IOAs), Commission Rate Schedule Nos. 247 and 249, and their related firm transmission service agreements for the Cities of Azusa and Colton (Cities):

For the City of Azusa

Supplemental Agreement between Southern California Edison Company and the city of Azusa for the Integration of the Century Power Sales Agreement

Edison-Azusa, Century Firm Transmission Service Agreement between Southern California Edison Company and the city of Azusa

For the City of Colton

Supplemental Agreement between Southern California Edison Company and the city of Colton for the Integration of the Century Power Sales Agreement

Edison-Colton, Century Firm Transmission Service Agreement between Southern California Edison Company and the city of Colton

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 16, 1992. 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. 92-29816 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 1, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Fifty-second Revised Sheet No. 50.1
Fifty-seventh Revised Sheet No. 50.2
Twenty-ninth Revised Sheet No. 51
Ninth Revised Sheet No. 51.1
Twelfth Revised Sheet No. 51.2
Thirteenth Revised Sheet No. 51.3
Third Revised Sheet No. 460
Eighth Revised Sheet No. 461
Original Sheet No. 461A

Original Volume No. 2

Eleventh Revised Sheet No. 1J
Eleventh Revised Sheet No. 1K
Eighth Revised Sheet No. 1L

Texas Eastern states that the above listed tariff sheets are being filed to reflect an interim funding mechanism for the Gas Research Institute (GRI) in Section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1. Pursuant to section 25 of the General Terms and Conditions, the above listed tariff sheets also reflect the current GRI volumetric surcharge of 1.47 cents per dekatherm and the uniform demand or reservation surcharge of 8 cents per dekatherm approved by the Commission's Order on Proposed Funding Mechanism issued August 28, 1992, in Docket No. RP92-133-000 as part of the 1993 interim mechanism.

The proposed effective date of the tariff sheets listed above is January 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern also states that copies of the filing were also served on Texas Eastern's Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29843 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that on November 30, 1992, Texas Gas Transmission Corporation (Texas Gas) tendered for

filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Sixty-fourth Revised Sheet No. 10
Forty-fifth Revised Sheet No. 11
Thirty-fifth Revised Sheet No. 11A
Third Revised Sheet No. 114
Fourth Revised Sheet No. 115
Fifth Revised Sheet No. 116

FERC Gas Tariff, First Revised Volume No. 2-A

Fifth Revised Sheet No. 10A
Fourth Revised Sheet No. 10C
First Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 108
Original Sheet No. 108A

Texas Gas proposed the revised tariff sheets to become effective January 1, 1993.

Texas Gas states that the revised tariff sheets are being filed pursuant to section 24 of Volume No. 1 and section 20 of Volume No. 2-A of Texas Gas's tariff to reflect the 1993 General RD&D Funding Units authorized by the Order on Proposed Funding Mechanism, issued by the Commission on August 28, 1992, in Docket No. RP92-133-000, at 60 FERC 61,203, and Order Denying Rehearing, issued October 28, 1992, at 61 FERC 61,121.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29878 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 2, 1992.

Take notice that Transwestern Pipeline Company (Transwestern) on November 30, 1992 tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective January 1, 1993

97th Revised Sheet No. 5
62nd Revised Sheet No. 6
8th Revised Sheet No. 6C
4th Revised Sheet No. 79
9th Revised Sheet No. 80

The above referenced tariff sheets are being filed, Transwestern states, to include a Demand Surcharge in addition to Transwestern's Gas Research Institute (GRI) Commodity Surcharge rate pursuant to section 21 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The addition of the GRI Demand Surcharge was determined pursuant to the Commission Order in Docket No. RP92-133-000, dated August 28, 1992. The currently effective GRI Commodity Surcharge of $0.0147/dth, as determined by the Commission Opinion No. 365 at Docket No. RP91-170-000 dated October 1, 1991, will remain in effect for Transwestern's 1993 rates. Transwestern requested that the revised GRI Surcharges as set forth on the above referenced tariff sheets become effective January 1, 1993.

Transwestern states that copies of the filing have been mailed to Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 9, 1992. 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. 92-29806 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-006]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1992.

Take notice that Trunkline Gas Company (Trunkline) on November 30, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Sub Original Sheet No. 9-CC.3
Sub Original Sheet No. 9-CC.4
Sub Original Sheet No. 9-CC.5
Second Sub Original Sheet No. 9-DG.4
Sub Original Sheet No. 9-DG.5
Sub Original Sheet No. 9-DG.6

Trunkline proposes that these revised tariff sheets become effective June 1, 1992.

Trunkline states that these revised tariff sheets are being filed in compliance with the Commission's Order dated October 29, 1992 in Docket No. RP92-165-001. Specifically, these revised tariff sheets reflect clarification of the mechanism under which Trunkline will flow back to its transportation customers excess revenues generated pursuant to its Unauthorized Gas penalty provisions and deletes the proposed Transportation Imbalance Carrying Charge Tracker included in revised tariff sheets filed on June 29, 1992 in Docket No. RP92-165-001.

Trunkline states that a copy of this filing is being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 9, 1992. 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. 92-29809 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Trunkline Gas Company (Trunkline) on December 1, 1992, tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 as reflected in appendix A attached to the filing.

The proposed effective date of these revised tariff sheets is January 1, 1993.

Trunkline states that such filing reflects a rate adjustment pursuant to the Commission's Orders issued on August 28, 1992 and October 28, 1992 in Docket No. RP92-133-000, et al. Such orders approve an interim GRI funding mechanism to permit jurisdictional members of Gas Research Institute (GRI), such as Trunkline, to charge and collect a GRI volumetric surcharge of 1.47¢ per dekatherm on all non-discounted commodity charges and non-discounted one-part rates for transportation services and to collect a surcharge of 8¢ per Mcf per month on all firm sales or transportation entitlements. Trunkline's exposure on discounted demand charges is limited to 10 percent of its total 1991 GRI contributions. In no event is Trunkline required to remit to GRI any amounts not collected, other than as specified in the tariff sheets attached to the filing.

Trunkline states that copies of its filing have been served on all affected customers and state commissions.

Any person desiring to be hard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules and regulations. All such motions or protests should be filed on or before December 10, 1992. 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. 92-29879 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-82-000]

Viking Gas Transmission Co.; Tariff Filing and Request for Waiver

December 3, 1992.

Take notice that on December 1, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Twenty Second Revised Sheet No. 6
Third Revised Sheet No. 89
Orignial Sheet No. 89A
Second Revised Sheet No. 105

Twenty Second Revised Sheet No. 6 and Second Revised Sheet No. 105 are being filed in compliance with the Commission order issued on August 28, 1992 in Docket No. RP92-133-000. In that order the Commission directed all pipelines to collect Gas Research Institute funding amounts through a uniform $.08 per dekatherm demand surcharge on all firm sales or transportation entitlements. Since the Commission has required the new demand surcharge to become effective January 1, 1993, Viking requests the same effective date for Twenty Second Revised Sheet No. 6 and Second Revised Sheet No. 105.

Take further notice that Viking's filing includes a request for waiver of the annual and quarterly Purchased Gas Cost Adjustment (PGA) filing requirement of § 154.304 of the PGA Regulations, 18 CFR 154.304, pending the removal of Viking's PGA clause and bundled sales schedules pursuant to its Order No. 636 restructuring in Docket No. RS92-52. Viking states that the purpose of Third Revised Sheet No. 89 and Original Sheet No. 89A is to place the Commission and all Viking customers on notice that Viking ceased providing sales service under its PGA clause on November 1, 1992, due to conversions to Part 284 transportation by the sales customers subject to the PGA clause, and that Viking's PGA clause will remain in effect for the purpose of resolving the outstanding balance in Account No. 191. Viking requests waiver of the 30-day notice requirement to allow this tariff sheet to become effective on December 1, 1992. Viking states further that, pending removal of its PGA clause, no purpose would be served by requiring it to file annual and quarterly PGA rate changes under § 154.304 of the Commission's regulations, since Viking is not providing any sales service.

Viking states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 10, 1992. 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 part must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29866 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1992.

Take notice that Williams Natural Gas Company (WNG) on December 1, 1992 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Fourteenth Revised Sheet No. 6
Fifteenth Revised Sheet No. 6A
Fourteenth Revised Sheet No. 9

The proposed effective date of these tariff sheets is January 1, 1993.

WNG states that this filing is being made to reflect a reservation surcharge of $.08 per Dth per month to be collected on all firm sales or transportation entitlements, as approved by Commission order issued August 28, 1992 in Docket No. RP92-133-000. This reservation surcharge is for the GRI funding unit and will be charged in addition to the $.0147 per Dth GRI funding unit included in WNG's current effective rates.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29880 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-49-000]

Williston Basin Interstate Pipeline Co.; Gas Research Institute Funding Unit Adjustment Filing

December 3, 1992.

Take notice that on December 1, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Forty-sixth Revised Sheet No. 10
First Revised Sheet No. 112
Third Revised Sheet No. 113
Original Sheet No. 113A

Original Volume No. 1-A

First Revised Sheet No. 143
Second Revised Sheet No. 144

Original Volume No. 1-B

Thirty-fourth Revised Sheet No. 10
Thirty-fourth Revised Sheet No. 11
First Revised Sheet No. 153
First Revised Sheet No. 154
First Revised Sheet No. 155

Original Volume No. 2

Fortieth Revised Sheet No. 11B

The proposed effective date of the above referenced tariff sheets is January 1, 1993.

Williston Basin states that the instant filing reflects the inclusion of the Gas Research Institute (GRI) 1993 volumetric surcharge of 1.47 cents per dkt on all applicable commodity charges and a demand surcharge of 8.218 cents per Mcf per month (8.0 cents per dkt per month) on all firm sales and transportation maximum daily quantities and maximum daily delivery quantities, respectively, as authorized by the Commission in its Order on Proposed Funding Mechanism issued August 28, 1992 in Docket No. RP92-133-000 (Phase I).

Any person desiring to be heard or to protect said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such petitions or protests should be filed on or before December 10, 1992 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-29867 Filed 12-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Financial Assistance Program Notice 93-04: Economics of Global Change Research Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support a new program for global climate change research entitled "Economics of Global Change Research Program." In the past few years, global change has become recognized as one of the most pressing environmental issues. The combination of new research results and interest in considering governmental action to control greenhouse gas and aerosol (GHG) emissions now makes it appropriate to initiate at DOE a strong research program on the fundamental economic aspects of global change.

DATES: Formal applications submitted in response to this Notice must be received by the Acquisition and Assistance Management Division by 4:30 p.m., e.s.t., January 28, 1993, to be accepted for a merit review in February 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 93-04 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 93-04. The following address must be used when submitting applications by U.S. Postal Express Mail Service, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Houghton, Office of Health and Environmental Research, Environmental Sciences Division, ER-74 (GTN), U.S. Department of Energy, Washington, DC 20585, (301) 903-8288 or by OMNET, J. Houghton.

SUPPLEMENTARY INFORMATION: This new Economics of Global Change research program will emphasize research that supports future decisionmaking; that is, research on subjects that will form the critical economic analysis for decisions expected to be made in the intermediate (2 to 5 years from now) and longer timeframe. It also emphasizes integrated analysis and the need for an economic framework that provides estimates of both benefits and costs of potential global change and actions to ameliorate adverse effects of global change.

The DOE Economics of Global Change research program will consist of the five major categories discussed below. ER will accept applications in any of the five categories. However, in Fiscal Year 1993, we are especially interested in the first two categories. Furthermore, within those two categories, we will give preference to applications that address two topics that are highlighted: (a) Technical innovation and diffusion in the Fundamental Processes category, and (b) greenhouse gas indices in the Integration category.

1. Fundamental Processes

This research will help understand the underlying economic forces that drive global change and that form a foundation for most economic modeling of global change, as well as the research to evaluate potential consequences of global change. Studies will be made to determine how to value non-market goods, such as species preservation and wilderness. This category will also include the choice of discount rates to value both monetary and nonmonetary benefits and costs over time. It may include making predictions regarding the future of important economic parameters for the US and the rest of the world, such as population characteristics and growth, Gross Domestic Product, and disposable income.

Highlighted Topic (a): Technical Innovation and Diffusion

One of the most uncertain aspects in modeling changes in the economy is predicting future technological advances that would impact both the ability to mitigate GHG emissions and to adapt to potential climate changes.

Research is needed to illuminate several technology innovation and diffusion issues that are central to the credible assessment of potential climate change. One research topic in this area relates to the characterization of technological processes in long-run models. For instance, the rate of technology innovation and diffusion could be different for technology that (1) improves the efficiency of energy use per unit output or per Gross Domestic Product (GDP), (2) decreases the amount of GHG per energy use, or (3) helps society adapt to specific changes in the global climate. Research could help resolve whether assumptions that are made (for instance, regarding technology improvements in energy production) should be correlated with equivalent assumptions elsewhere in an assessment, such as labor productivity. Even if no policy actions were taken or if actions were only a subset of countries, certain technology changes would take place that might affect emissions levels and adaptation opportunities on a global scale. Research in the innovation and diffusion area could also shed light on the differential impact of policy instruments, such as carbon taxes or funding for additional research and development on the direct (in-country) and indirect (global) technology development and diffusion process.

Research in this highlighted topic also includes the study of the ability and willingness of society to absorb existing technology. Research in this second area would address an important controversy regarding the extent to which a significant reduction of GHG emission can be achieved with a net gain to GDP or at least very little cost. Others argue that most of the potential gain has already been accomplished and that further reductions imply significant costs to society. A resolution of this problem by comparing in detail these two views, commonly known as top/down versus bottom/up, would aid assumptions about both current and future policy options.

A third research area in the highlighted innovation and diffusion topic involves study of the transfer of technology innovation to other countries. This research will help predict the flow of technology and the effectiveness of various instruments to facilitate the transfer. The research will help decisionmakers understand how to encourage the transfer so that global climate goals can be met by developing countries while also maintaining intellectual property rights.

2. Integration

An overall goal of this research program is to provide fundamental economic groundwork for the prediction of the benefits and costs of policy alternatives. One important aspect of this activity is modelling the integrated system, that is, analyzing both emissions and consequences/adaptations issues together to better evaluate policy options. The research will involve topics that arise in the context of integration, such as developing response surfaces for reduced form models of the natural climate change system. Other topics include assessing the value of improved information regarding specific elements of the system and decisionmaking under uncertainty.

Highlighted Topic (b): Greenhouse Gas Indices

Potential policy instruments to decrease greenhouse gas emissions may require a formula for trading off among the gases. This research will be concerned with many scientific and economic issues, including the expected lifetime of the different gases, their relative absorbing capacity, the accounting of sources and sinks, the resulting atmospheric concentrations over time, estimates of damage that vary over time, and credits or debits for other economic effects (for instance, CFCs as contributors to ozone depletion and CO_2 increases that can enhance some crops). This research should develop weighting procedures to allow tradeoffs among the gases.

3. Sectoral Studies

This research will make up some of the building blocks of an integrated assessment. Research will focus on both the determination of GHG emissions and the potential consequences (damage functions) of global change as it relates to energy.

4. International Issues

A sophisticated understanding of the international flow of economic goods is necessary for developing policies that involve other countries. Topics in this area include analysis of the instruments for influencing change in other countries.

5. Assessments

This research will focus on assessing research methods and results for the policy process. This research should anticipate the longer term needs of the policy process.

It is anticipated that up to $1 million will be available for grant awards during FY 1993, contingent upon availability of appropriated funds. Funding for multiple year grant awards is also contingent upon availability of funds. Awards are expected to range from $50,000 to $150,000, with the number of awards determined by the number of fundable applications and the total amount of funds available for this program. Teaming or collaborative studies with national laboratories are encouraged.

The program description portion of each application should not exceed 15 double-spaced 10 pt pages with one-inch margins. Lengthy applications are not encouraged and may be returned with a request to reduce length.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the ER Special Research Grant Application Kit and Guide and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Environmental Sciences Division, Office of Energy Research, ER-74, Washington, DC 20585. Telephone requests may be made by calling (301) 903-4208. Additional information pertaining to the Economics of Global Change research program is also available by calling Dr. Houghton (301) 903-8288.

The Catalog of Federal Assistance Number for this program is 81.049.

Issued in Washington, DC on December 2, 1992.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 92-29912 Filed 12-8-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-92-NG]

Sumas Cogeneration Co., L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sumas Cogeneration Company, L.P. an authorization to import from Canada up to 24,000 Mcf of natural gas per day and up to 8 Bcf of natural gas per year over a 20-year term beginning in the first quarter of 1993, for use at a new 113 megawatt cogeneration facility near Sumas, Washington.

A copy of this order is available for inspection and copying in the Office of

Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-29911 Filed 12-8-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4543-2]

Agency Information Collection Activities Under OMB Review

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 Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 8, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Adverse Reaction Records and Reporting—TSCA section 8(c). (EPA ICR No: 1031.04; OMB No: 2070-0017) This is a request for extension of the expiration date of a currently approved collection.

Abstract: Under section 8(c) of the Toxic Substances Control Act (TSCA), chemical manufacturers and processors must maintain records of significant adverse reactions to health or the environment allegedly caused by their products. EPA periodically requires submission of an abstract of these records. The Agency uses the information to assess the necessity for regulatory action with respect to a chemical.

Burden Statement: The public burden for this collection of information is estimated to average 8 hours for reporting and 3.5 hours per recordkeeper annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers and processors

Estimated No. of Respondents: 3 respondents for reporting and 9,518 for recordkeeping.

Estimated Total Annual Burden on Respondents: 33,337 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: December 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-29857 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4543-8]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions (section 112(i)(5)) of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through October 1992 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is one of a series of notices of this type. The most recent notice listed ten sources which have had commitments deemed complete by EPA. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919-541-5421), Rick Colyer (telephone: 919-541-5262), or Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I—Janet Beloin	(617) 565-2734
Region II—Umesh Dholakia or Harish Patel	(212) 264-6676
Region III—Jim Baker	(215) 597-3499
Region IV—Anthony Toney	(404) 347-2864
Region V—John Pavitt	(312) 886-6858
Region VI—Tom Driscoll or Tanya Murray	(214) 655-7549 (214) 655-7547
Region VII—Carmen Torres-Ortega	(913) 551-7873
Region VIII—Cory Potash	(303) 293-1886
Region IX—Ken Bigos	(415) 744-1240
Region X—Chris Hall	(206) 553-1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On October 29, 1992, the EPA Administrator signed a final rule to implement this "Early Reductions" provision. The final rule will be published in the **Federal Register** in the near future.

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emissions reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed

rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above.

Seventy-six enforceable commitments have been received by EPA, and twelve have been determined to be complete to date. Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The purpose of today's notice is to add commitments from Monsanto and Dow Corning to the previously published list of commitments that have been determined to be complete by EPA under the Early Reductions Program. Since the last notice, EPA has deemed complete one commitment from Monsanto for a source in Sauget, Illinois and one from Dow Corning for a source in Midland, Michigan. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittals added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through October 30, 1992. These submittals are undergoing technical review within the EPA at this time.

TABLE 1

[Complete enforceable commitments as of October 30, 1992]

Company	Location	EPA Region
1. Kalama Chemical, Inc.	Kalama, WA ...	X
2. Amoco Chemical Co. (first source).	Texas City, TX	VI
3. Amoco Chemical Co. (second source).	Texas City, TX	VI
4. Johnson & Johnson Medical, Inc.	Sherman, TX ..	VI
5. PPG Industries	Lake Charles, LA.	VI
6. Allied-Signal (first source).	Baton Rouge, LA.	VI
7. Allied-Signal (second source).	Baton Rouge, LA.	VI
8. Allied-Signal (third source).	Baton Rouge, LA.	VI
9. Allied-Signal (first source).	Ironton, OH	V
10. Allied-Signal (second source).	Ironton, OH	V
11. Monsanto	Sauget, IL	V
12. Dow Corning	Midland, MI	V

Dated: December 2, 1992.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-29856 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66167; FRL 4170-4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by March 9, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 68 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100-00622	Atratol 90	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000100-00706	Rifle Herbicide	Methyl 2-[[[[4,6-bis(difluoromethoxy)-2-pyrimidinyl-amino-carbonyl amino-sulfonyl benzoate
000100 DE-89-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 IN-89-0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 LA-89-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 NC-89-0006	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 TN-89-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000121-00042	Cutter Back Yard Insect Repellent Spray	*N,N*-Diethyl-meta-toluamide and other isomers
000121-00043	Cutter for Kids Insect Repellent Spray	*N,N*-Diethyl-meta-toluamide and other isomers
000335 AZ-91-0014	Maneb 80	Manganese ethylenebis(dithiocarbamate)
000499-00181	Whitmire Ticks-Off Repellent	Butoxypolypropylene glycol

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Rotenone Cube Resins other than rotenone *N,N*-Diethyl-meta-toluamide and other isomers
000499–00267	Whitmire Regulator Pt 411	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00338	P/P Outdoor Lotion	5-Chloro-2-(2,4-dichlorophenoxy)phenol Zirconium oxide 1,2,3-Propanetriol, mono(4-aminobenzoate) *N,N*-Diethyl-meta-toluamide and other isomers
000499–00340	P/P Outdoor Lotion	5-Chloro-2-(2,4-dichlorophenoxy)phenol Zirconium oxide 1,2,3-Propanetriol, mono(4-aminobenzoate) *N,N*-Diethyl-meta-toluamide and other isomers
000499–00356	Whitmire Insect Repellent Stick No.1	*N*-Octyl bicycloheptene dicarboximide *N,N*-Diethyl-meta-toluamide and other isomers
000655–00149	Prentox 80% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000829–00217	SA-50 Grand Benomyl Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
001021–01595	Pro Kill Roach & Ant Dust	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
001021 OR–88–0011	Mgk Big Game Repellent Powder Bgr-P	Putrescent whole egg solids
001386–00576	Unico Snail and Slug Pellets - M	4-(Methylthio)-3,5-xylyl methylcarbamate
001839–00048	BTC 812	Isopropanol Octyl dodecyl dimethyl ammonium chloride
002935–00400	Dibrom(r) 4 Dust	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
003125 MI–90–0003	Dyrene 50% Wettable Powder	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003234–00029	Pax Total for Lawns	2,4-Dichlorophenoxyacetic acid *N*-Oleyl-1,3-propylenediamine 2,4-dichlorophenoxyacetate Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate Dimethyl tetrachloroterephthalate
004816–00255	Drione 79700 Insecticide	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00326	Niagara Drione Dust Base Insecticide Code 797.01	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00346	Niagara Conditioned Dri-Die Dust Base	Butoxypolypropylene glycol Silica gel
004816–00367	Drione Insecticide Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00412	Flea & Tick Insecticide Powder	1-Napthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00427	Flea and Tick Powder Insecticides	1-Napthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00618	Dri-Bye	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00692	Double-Action Flea & Tick Powder II	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
004816–00702	Pyrenone II Pet Powder	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
0048'6 NC–85–0002	Permanone Tick Repellent	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
005412–00005	No.38 Citrus Pads-Biphenyl Treated	Biphenyl
005481–00239	Alco Printrex 2-5g	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 2-Chloro-4,6-bis(ethylamino)-*s*-triazine
005887–00052	Black Leaf Fore Lawn Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
006330–00017	Perma-Guard Pet Insecticide D-32	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl 2,2-dimethyl-3-(2- Pine oil Pyrethrins Silicon dioxide

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
007176–00012	Butcher's Clockwork Disinfectant Deodorizer Spray	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)
008660–00092	Brush & Weed Killer	Ammonium sulfamate
008660–00116	Liquid Edger Ready To Use Herbicide	Ammonium sulfamate
008764–00014	Freshgard 110	2,6-Dichloro-4-nitroaniline
010182–00245	Sutan + Atrazine 4.4f Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00247	Sutazine + 6.25 ME Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00309	Atra-Bute Flowable Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00310	Atrabute II+	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00328	Baq-Zine 90-Granular Algicide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
010349–00011	Nalco Adocide	Alkyl*-*N,N*-bis(2-hydroxyethyl)amine *(100% C12-C18) *N*-Polyethoxylated oleylamine
010370–00187	Diathrin Plus Roach and Ant Powder	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
011556–00055	Cutter Trichlorfon Concentrate	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
011556–00108	Epco Trichlorfon 80% Soluble Powder Animal Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
011556–00110	Best 4 Servis Brand Navunex 80% Soluble Powder Animal I	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
011656–00028	Thiodan 3E Insecticide	6,7,8,9,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
019713–00346	Liquid Edger	Ammonium sulfamate
028293–00177	Flea and Tick Powder	1-Napthyl-*N*-methylcarbamate Kerosene (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
034704–00575	Hopkins Mesrepel	4-(Methylthio)-3,5-xylyl methylcarbamate
034704–00608	Transamine OA-3D Herbicide 2,4-D	*N,N*-Dimethyl oleyl-linoleyl amine 2,4-dichlorophenoxyacetate
034704 NC–91–0017	Sclerban 75 Wdg	2,6-Dichloro-4-nitroaniline
034704 NV–89–0001	Clean Crop Botran 75 Wdg	2,6-Dichloro-4-nitroaniline
034704 OR–89–0007	Botran 75 W	2,6-Dichloro-4-nitroaniline
034704 WA–89–0017	Botran 75-W	2,6-Dichloro-4-nitroaniline
040925 FL–76–0008	Ortho Dibrom 14 Concentrate	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
047000–00030	Economy Pet Powder	Butoxypolypropylene glycol (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel Ammonium fluosilicate
055947 OR–90–0012	Spur 22 EW Insecticide	*N*-(2-Chloro-4-trifluoromethyl)phenyl)-DL-valine (+-)-cyano(3-phenoxyphenyl)methyl ester
059639–00050	Dibrom Sevin 4-10 Dust	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate 1-Napthyl-*N*-methylcarbamate
059639 CA–90–0011	Slug-Geta Snail & Slug Bait (pelleted)	4-(Methylthio)-3,5-xylyl methylcarbamate
063862–00001	Dia-Pure	Silicon dioxide
064160 AZ–91–0003	DuPont Gold Crest Tribute Termiticide/Insecticide Conc	4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl ester

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000121	Miles Inc., Consumer Household Products Division, 7123 W. 65th Street, Chicago, IL 60638
000335	Elf Atochem N.A. Inc., Three Parkway, Room 820, Philadelphia, PA 19102.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct. Industrial Blvd., St Louis, MO 63122.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000829	Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 34220.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave. North, Minneapolis, MN 55427.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003234	Pax Co., 580 W. 13th South, Salt Lake City, UT 84115.
004816	Roussel E.H., 809 Harrison Street, French Town, NJ 08825.
005412	Citrus-Pak, 5 W. Washington Ave., Yakima, WA 98903.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
006330	Wallace C. Tharp, Universal Diatombsinc, 410 12th St., NW, Albuquerque, NM 87102.
007176	Butcher Co, 120 Bartlett St, Marlborough, MA 01752.
008660	The Andersons, Box 119, Maumee, OH 43537.
008764	FMC Corp., Box 1708, Lakeland, FL 33802.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
010349	Nalco Chemical Co., Box 87, Sugar Land, TX 77487.
010370	Roussel E.H., 809 Harrison St, Frenchtown, NJ 08825.
011556	Miles Inc., Animal Health Division, Box 390, Shawnee Mission, KS 66201.
011656	Western Farm Service, Inc., Box 1168, Fresno, CA 93715.
019713	Drexel Chemical Co, Box 9306, Memphis, TN 38109.
028293	Unicorn Laboratories, 1002 118th Ave N., St. Petersburg, FL 33716.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
040925	Florida A & M University, John A. Mulrennan, Sr Research Laboratory, 4000 Frankford Ave., Panama City, FL 32405.
047000	Chem-Tech, Ltd., 4515 Fleur Dr., ι303, Des Moines, IA 50321.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
059639	Valent U.S.A. Corp., c/o ICI Americas, Inc., Concord Pike & New Murphy Rd, Wilmington, DE 19897.
063862	Dia-Pure Co., Ltd, 7621 Little Ave., Suite 200, Charlotte, NC 28226.
064160	Roussel Bio Corp., Lawn & Garden Division, 3741 Red Bluff Rd. - Suite 200, Pasadena, TX 77503.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, four pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3 with the EPA Company Number of their registrants:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
71786-60-2	Alkyl*-*N,N*-bis(2-hydrocyethyl)amine *(100% C12-C18)	010349
55256-32-1	Dimethyl oleyl-linoleyl amine 2,4-dichlorophenoxyacetate	034704
10361-16-7	Octyl dodecyl dimethyl ammonium chloride	001839
26635-93-8	Polyethoxylated oleylamine	010349

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before March 9, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: November 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-29593 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G4006/T630; FRL 4170-3]

DowElanco; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide *N*-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazolo[1,5a]-pyrimidine-2-sulfonamide (coded Flumetsulam) in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

DATES: This temporary tolerance expires September 4, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-7850.

SUPPLEMENTARY INFORMATION: DowElanco, Quad IV, 9002 Purdue Rd., has requested in pesticide petition (PP) 1G4006, the establishment of a temporary tolerance for residues of the herbicide *N*-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazolo[1,5a]-pyrimidine-2-sulfonamide (coded Flumetsulam) in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permits 62719-EUP-16 and 62719-EUP-17, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires September 4, 1994. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

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

Dated: November 9, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-29591 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66168; FRL 4174-7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by March 9, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 16 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000070–00183	Kill Ko Mal-Thox HDC Dust	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane). *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate.
000239–02292	Ortho 3-Way Rose and Flower Care 8-12-4	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate. Trifluralin (*a,a,a*-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine).
000499–00148	Whitmire PT 150 Pyrethrum	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%. Pyrethrins.
000499–00278	Whitmire Regulator Pt 440	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate. Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate.
002217–00464	Grain Gard Flour Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate.
002749–00511	Aceto Algaesim Algaecide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine.
009444–00109	Purge Drione Pressurized Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%. Pyrethrins. Silica gel.
009444–00116	CB Flea and Tick Trigger Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%. Pyrethrins.
010182 OR–82–0036	Ortho Paraquat (CL)	1,1'-Dimethyl-4,4'-bipyridinium dichloride.
040285 LA–89–0017	Degesch Fumi-Cel Plate	Magnesium phosphide.
051793–00033	Elite Aerosol Seven Month Insect Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%. Pyrethrins. Silica gel.
051793–00118	Elite Flea & Tick Powder II	1-Napthyl-*N*-methylcarbamate. (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%. Pyrethrins. Silica gel.
055947–00002	Banvel 10G Herbicide	3,6-Dichloro-*o*-anisic acid.
055947–00017	Banvel 4-O.S. Industrial Herbicide	3,6-Dichloro-*o*-anisic acid.
055947–00019	Banvel-520 Oil Soluble Industrial Herbicide	3,6-Dichloro-*o*-anisic acid. Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester.
063862–00001	Dia-Pure	Silicon dioxide.

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000239	Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd., St Louis, MO 63122.
002217	PBI/Gordon Corp., 1217 W. 12th Street, Box 4090, Kansas City, MO 64101.
002749	Aceto Agriculture Chemicals Corp., One Hollow Lane, Lake Success, NY 11042.
009444	Waterbury Companies Inc., 100 Calhoun St., Box 640, Independence, LA 70443.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
040285	Degesch America, Inc., Box 116, Weyers Cave, VA 24486.
051793	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	Company name and address
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
063862	Dia-Pure Co., Ltd, 7621 Little Ave., Suite 200, Charlotte, NC 28226.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before March 9, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: November 27, 1992.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 92-29590 Filed 12-8-92; 8:45 am]
BILLING CODE 6560-50-F

[OPP-34037; FRL 4174-8]

Notice of Receipt of Requests for Amendments to Delete Use in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 9, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before March 9, 1993, to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product No.	Delete from label
000358-00137	SMOKE'em	Ground wasp, mole burrows.
062719-00094	Balan E.C. Herbicide	Alfalfa, birdsfoot trefoil, clover (alsike, ladion & red), direct seeded lettuce.
062719-00129	Balan Dry Flowable Selective Herbicide	Alfalfa, birdsfoot trefoil, clover, (alsike, ladino & red), direct seeded lettuce.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000358	NOTT Mfg Co., Inc., P.O. Box 685, Pleasant Valley, NY 12569.
062719	DowElanco, 9002 Purdue Road, Indianapolis, IN 46268.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: November 27, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-29598 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

[PF-568; FRL-4168-2]

Fenpropathrin; Pesticide Tolerance Petitions and Food/Feed Additive Petitions from Valent U.S.A. Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) proposing the establishment of regulations for residues of the pesticide chemical fenpropathrin in or on various agricultural commodities and food and feed commodities. Valent U.S.A. Corp. submitted these petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM 13), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: EPA has received from Valent U.S.A. Corp., 1333 North California Blvd., suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, pesticide petitions (PP) and food/feed additive petitions (FAP) as follows, proposing the establishment or amendment of regulations for residues of the pesticide chemical fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on various agricultural commodities and food and feed commodities. The filings are as follows:

1. *PP 1F3949.* Valent has submitted PP 1F3949 proposing that 40 CFR part 180 be amended to establish a tolerance for fenpropathrin in or on grapes at 5 parts per million (ppm) and in or on oranges at 2 ppm.

2. *PP 2F4144.* Valent has submitted PP 2F4144 proposing that 40 CFR part 180 be amended to establish tolerances for fenpropathrin in or on cottonseed at 1 part per million (ppm); meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.02 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.02 ppm; milk fat (reflecting 0.03 ppm in whole milk) at 0.07 ppm; and poultry meat, fat, and meat byproducts and eggs at 0.02 ppm.

3. *FAP 2H5639.* Valent has submitted FAP 2H5639 proposing that 40 CFR part 185 be amended to establish a tolerance of 15 ppm for raisins and 160 ppm for orange oil and to establish under 40 CFR part 186 a tolerance of 45 ppm for raisin waste, 35 ppm for grape pomace, wet and dry, and 8 ppm for orange pulp, dry. This notice of the petition supersedes the notice of the petition that appeared previously in the **Federal Register** of June 10, 1992 (57 FR 24647).

4. *FAP 2H5648.* Valent has submitted FAP 2H5648 proposing that 40 CFR part 185 be amended to establish a tolerance for fenpropathrin in or on cottonseed oil at 3 ppm and that 40 CFR part 186 be amended to establish a tolerance for fenpropathrin in or on cottonseed soapstock at 2 ppm.

Authority: 7 U.S.C. 136a.

Dated: November 21, 1992.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-29758; Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-51810; FRL-4177-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 17 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-87, 93-88, January 26, 1993.

P 93-89, 93-90, 93-91, 93-92, 93-93, January 27, 1993.

P 93-94, January 28, 1993.

P 93-98, February 1, 1993.

P 93-99, January 30, 1993.

P 93-100, 93-101, 93-102, 93-103, 93-104, 93-105, 93-106, January 31, 1993.

Written comments by:

P 93-87, 93-88, December 27, 1992.

P 93-89, 93-90, 93-91, 93-92, 93-93, December 28, 1992.

P 93-94, December 29, 1992.

P 93-98, January 2, 1993.

P 93-99, December 31, 1992.

P 93-100, 93-101, 93-102, 93-103, 93-104, 93-105, 93-106, January 1, 1993.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51810)" and the specific number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B Hazen, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington,DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-87

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-88

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-89

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-90

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-91

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-92

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-93

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-94

Importer. Confidential.
Chemical. (G) Substituted naphthalene sulfonic acid, alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 93-98

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) 1,2-Ethandiol, monosodium salt.
Use/Production. (G) Catalyst. Prod. range: Confidential.

P 93-99

Manufacturer. Confidential.
Chemical. (G) Acetoacetylated alkane.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-100

Importer. Ciba-Geigy Corporation.
Chemical. (G) 4,4'-(1-Methylidene)bisphenol, polymer with chloromethyl)oxirane, 4,4'-(methyldiene)bis(2,6-dibromopheno)and a polyepoxide.
Use/Import. (S) Resin component of composites or pre-pregs for printed wiring board laminates. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 100-2737 mg/kg species (rat). Acute dermal toxicity: LD50 13 g/kg species (rabbit). Eye irritation: strong species (rabbit). Skin irritation: slight species (rabbit).

P 93-101

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-102

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-103

Manufacturer. Confidential.
Chemical. (G) Acetylated prepolymer.
Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-104

Manufacturer. Witco Corporation.
Chemical. (S) Fatty acids, C_{14-22} and C_{16-20} unsaturated linear butyl esters.
Use/Production. (S) Plasticizer for plastics production, intermediate incosmetics, monomolecular for lubricant for paper. Prod. range: 20,000-180,000 kg/yr.

P 93-105

Manufacturer. Confidential.
Chemical. (G) High solids, saturated polyester resin.
Use/Production. (S) High solids polyester resin for industrial protective and decorative paints, and coatings for metals. Prod. range: Confidential.

P 93-106

Manufacturer. Calgene Chemical, Inc.
Chemical. (S) 2-Ethyl hexyl ester of rapeseed fatty acids.
Use/Production. (S) Textile lubricant, hydraulic fluids and industrial lubricant. Prod. range: 5,000-20,000 kg/yr.

Dated: December 2, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 92-29861 Filed 12-8-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 1, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0495.
Title: Regulation of International Common Carrier Services (Report and Order, CC Docket No. 91-360).
Action: Revision of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting and Other: Section 63.13 represents a one-time collection.
Estimated Annual Burden: 379 responses; 1.68 hours average burden

per response; 640 hours total annual burden.

Needs and Uses: The rules modify current FCC policy that treats "foreign-owned" U.S. common carriers as dominant in their provision of all international services to all foreign markets in favor of a policy that regulates U.S. international carriers, whether U.S.-or foreign-owned, as dominant only on those routes where foreign affiliates have the ability to discriminate against nonaffiliated U.S. international carriers in the provision of access to bottleneck services and facilities. The proposed rules do not modify the regulatory treatment of U.S. international common carriers that are regulated as dominant for certain international services on other bases. This action will provide significant consumer benefits, relieve U.S. carriers from unnecessary regulatory burdens, and continue to protect U.S. carriers from discrimination in access to foreign markets.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-29770 Filed 12-8-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 2, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0312.

Title: Section 94.27(a)(6), Application and standard forms.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 30 responses; .166 hours average burden per response; 5 hours total annual burden.

Needs and Uses: Rule 94.27(a)(6) requires a licensee planning to assign the right to operate its microwave station to another entity to notify the Commission of its desire to assign all rights, title and interest in and to such authorization, stating the call sign and location of the station, and that the assignor will submit its current station authorization for cancellation upon completion of the assignment. This notification is used by FCC personnel to assure compliance with the Communications Act. In the absence of this requirement, the Commission's license data base would be inaccurate, thereby hindering the ability of the Commission to resolve interference problems quickly.

OMB Number: 3060-0299.

Title: Section 94.51, (Private Microwave) Time to consent.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 50 responses; 0.33 hours average burden per response; 17 hours total annual burden.

Needs and Uses: Rule 94.51 requires that private microwave stations actually be constructed and placed in operation within 12 months from the date of grant. Those licensees unable to construct the station within 12 months must send a written request for an extension of time to construct setting forth the reasons why this extension of time is necessary. Upon good cause, the Commission will determine granting the request for extension. This information is used by FCC personnel to determine whether to grant an extension of time to construct. In order to assure efficient spectrum usage, we require licensees to construct within 12 months or inform us to the contrary. In the absence of this notification of failure to construct, the Commission and prospective applicants would not have an accurate picture of current frequency usage.

OMB Number: 3060-0301.

Title: Section 94.113, (Private Microwave) Station records.

Action: Extension of a currently approved collection.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 17,886 recordkeepers; 0.166 hours average burden per recordkeeper; 2,981 hours total annual burden.

Needs and Uses: Rule 94.113 specifies the records required to be maintained by station licensees. These records basically indicate maintenance performed on the licensee's transmitter; the results of transmitter measurements performed according to 47 CFR 94.85; and instances of microwave tower light checks and failures, if any, and the corrective action taken. These records of transmitter measurements and maintenance checks are used by the licensee or Commission field personnel to note any recurring equipment problems or conditions that may lead to degraded equipment performance and/or interference problems. The records regarding tower lighting are required to ensure that the licensee is aware of tower light condition and proper operation, so that any aviation safety hazards may be avoided.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-29775 Filed 12-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Naperville Joliet Investment Company; Formation of; Acquisition by; and Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying

specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding this application must be received not later than December 23, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Naperville Joliet Investment Company, Northbrook, Illinois; to acquire 98.3 percent of the voting shares of Westbank/Naperville, Naperville, Illinois, and 100 percent of the voting shares of Westbank/Will County, Joliet, Illinois.

Board of Governors of the Federal Reserve System, December 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30049 Filed 12-8-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a reinstatement of an information collection titled: "Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report". This request for OMB clearance is made by the Division of Energy Assistance within the Office of Community Services (OCS) of the Administration on Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report.

OMB No.: 0970-0106.

Description: The Low Income Home Energy Assistance Program (LIHEAP) block grant program was established under title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended. Section 2607 of the Act instructs the Secretary of the Department of Health and Human Services to reallot to all grantees any funds it is determined will not be used during any fiscal year and not requested by the grantee to be held available for the following fiscal year.

The Division of Energy Assistance of the Administration for Children and Families (ACF) will use the information collection under 45 CFR 96.81 to determine the amount of funds to be carried forward by each grantee to the next fiscal year (limited to 10 percent of the funds payable to the grantee and not transferred to another block grant under section 2604 of the statute), the reasons that the amount allotted to such grantee will not be used during the current fiscal year, the type of assistance to be provided with the amount carried forward, and the amount of funds, if any, to be subject to reallotment.

This information will also be included in a report to the Senate Appropriation Committee and in the Annual Report to the Congress as required by section 2610 of the Act.

The requested budget information may be submitted in any format prescribed by the grantee. There is no other manner to determine the funds available for reallotment or to comply with sections 2607 and 2610 of Public Law 97-35.

Annual Number of Respondents: 177.

Annual Frequency: 1.

Average Burden Hours Per Response: 3.

Total Burden Hours: 531.

Dated: November 30, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-29785 Filed 12-8-92; 8:45 am]

BILLING CODE 4130-01-M

Health Resources and Services Administration

Program Announcement for Grants for Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 will be accepted for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds as authorized by section 827, title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of Public Law 102-408, dated October 13, 1992.

Approximately $3,698,000 will be available in FY 1993 for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. Total continuation support recommended is approximately $1,900,000. It is anticipated that approximately $1,798,000 will be available to support 12 competing awards averaging approximately $150,000 each.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. Data are not yet available for FY 1992. In FY 1991, HRSA reviewed 50 applications for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. Of those applications, 38 percent were approved and 62 percent were not recommended for further consideration. Four projects, or 21 percent of the approved applications, were funded.

Eligibility

Public and nonprofit private schools of nursing and other public or nonprofit private entities are eligible for grant support.

Section 827 of the Public Health Service Act authorizes grants to increase opportunities for individuals from disadvantaged backgrounds to pursue a nursing education. Students who may have an associate degree in nursing would be eligible to receive funding under this section if they are financially, educationally or culturally disadvantaged.

To implement this program in FY 1993 in a timely manner, an existing definition of "an individual from a disadvantaged background" is being used (42 CFR 57.2904). For purposes of Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds in FY 1993, "individuals from disadvantaged backgrounds" are individuals who: (1) come from an environment that has inhibited the individual from obtaining knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or (2) come from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of Census, adjusted annually for

changes in the Consumer Price Index, and multiplied by a factor to be determined by the Secretary for adaptation to this program.

The following income figures determine what constitutes a low income family for purposes of Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds for FY 1993.

Size of parents' family [1]	Income level [2]
1	$9,100
2	11,800
3	14,100
4	18,000
5	21,300
6 or more	23,900

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1991, rounded to $100.

Grants may be awarded to eligible applicants to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds:

1. By identifying, recruiting and selecting such individuals;
2. By facilitating the entry of such individuals into schools of nursing;
3. By providing counseling or other services designed to assist such individuals to complete successfully their nursing education;
4. By providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education;
5. By paying such stipends as the Secretary may determine for such individuals for any period of nursing education;
6. By publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools; and
7. By providing training, information or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

The period of federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives 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 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

These criteria were established in fiscal year 1990 after public comment (54 FR 46130), dated November 1, 1989).

Application Information

Requests for grant application materials and questions regarding grants policy and business management issues and should be directed to:
Ms. Sandra Bryant, Grants Management Specialist (D-19), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6915 FAX: 443-6343.

Completed applications should also be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mary S. Hill, Ph.D., Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 9-36, Rockville, Maryland 20857, Telephone: (301) 443-6193 FAX: 443-8586.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915-0060:

The deadline date for receipt of applications is March 1, 1993.

Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, is listed at 93.178 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 22, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-29830 Filed 12-8-92; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, End-Stage Renal Disease Data Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the End-Stage Renal Disease Data Advisory Committee on December 15, 1992. The meeting will take place from 11 a.m. to approximately 12 p.m. in Conference Room 4C32, Building 31A, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference call with the use of a speaker phone. The meeting will be devoted to finalizing the Committee's 1992 Annual Report. The entire meeting will be open to the public.

Dr. Ralph Bain, Executive Director, End-State Renal Disease Data Advisory Committee, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an

agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 3, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–29975 Filed 12–8–92; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Child and Adolescent Mental Health Service System Research Demonstration Grants

AGENCY: Center for Mental Health Services, SAMHSA, PHS, DHHS.

ACTION: Announcement of final receipt dates, withdrawal, and anticipated reannouncement of program.

The Center for Mental Health Services (CMHS) is announcing final receipt dates for the grant program announcement entitled, "Child and Adolescent Mental Health Service System Research Demonstration Grants"—PA91–40.

This program announcement was issued in Fiscal Year 1991 by the National Institute of Mental Health of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA). Under the provisions of the ADAMHA Reorganization Act (Pub. L. 102–321), effective October 1, 1992, the Child and Adolescent Service System Program (CASSP) transferred to the new CMHS within the new Substance Abuse and Mental Health Services Administration (SAMHSA).

Under the authority of section 520A of the Public Health Service Act, as amended by Public Law 102–321, and subject to the availability of funds, CMHS will accept new grant applications and competitive renewal grant applications in response to the current CASSP program announcement for one additional round. CMHS invites applications through February 1, 1993, for new grant applications and through March 1, 1993, for revised and competitive renewal grant applications. Effective March 2, 1993, the current announcement is hereby withdrawn; therefore, no applications will be entertained under the existing announcement after that date. However, CMHS plans to issue a new program announcement addressing the same programmatic objectives and it is anticipated that it will be published in the **Federal Register** in the Spring of 1993.

The CASSP is designed to improve systems of service delivery for children and adolescents with, or at risk for developing, severe mental, behavioral or emotional disorders and their families. The purpose of this program announcement is to advance the development of research that will contribute to the establishment and maintenance of effective mental health service delivery systems for children and adolescents with, or at risk for, serious emotional or mental disorders, especially those systems which include community-based services and interagency coordination.

Eligibility and application procedures remain consistent with those described in the current program announcement—PA91–40.

For a copy of the current announcement, or for additional information regarding the program including eligibility or application procedures, contact: Diane L. Sondheimer, Chief, Research Demonstration Program, Child, Adolescent and Family Branch, Division of Demonstration Programs, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C–09, Rockville, Maryland 20857, (301) 443–1333.

The Catalog of Federal Domestic Assistance number for the CASSP program is 93.125.

Dated: December 2, 1992.

Richard Kopanda,

Acting Associate Administrator for Management, Substance Abuse and Mental Health Services Administration.

[FR Doc. 92–29831 Filed 12–8–92; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3545]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement;

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 2, 1992.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Low-Income Public Housing—Project-Based Accounting (FR–3088).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The purpose of the information collection is to implement the requirements for Project-Based Accounting directed by section 502(c) of the National Affordable

Housing Act of 1990. Public Housing Agencies certify to HUD that they maintain a Project-Based Accounting System in accordance with § 990.320.

Form Number: None.

Respondents: Non-Profit Institutions.

Frequency of Submission: One-Time Certification.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Certification	784		1		1		784
Recordkeeping	784		1		.25		196

Total Estimated Burden Hours: 980.

Status: Extension.

Contact: John T. Comerford, HUD, (202) 708–1872. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 2, 1992.

[FR Doc. 92–29801 Filed 12–8–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3546]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 3, 1992.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Information Collection and Recordkeeping Requirements on Loan Servicing—Section 223(f) and 221(d) Coinsurance Programs.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The information collected includes items which coinsuring lenders collect from mortgagors to monitor project performance and management, as well as items which HUD collects from coinsuring lenders to monitor and to ensure effective servicing of section 223(f) and 221(d) coinsured loans.

Form Number: HUD–9815.

Respondents: Businesses or other for-profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	622		10		4.2655		26,532
Recordkeeping	622		1		2.4		1,495

Total Estimated Burden Hours: 28,027.

Status: Extension.

Contact: Richard Pace, HUD, (202) 401–3272. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 3, 1992.

[FR Doc. 92–29802 Filed 12–8–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–03–4410–03]

Planning Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: An Environmental Assessment (EA) has been prepared and is available for the proposal to establish the Gandy Salt Marsh Area of Critical Environmental Concern (ACEC) and to amend the House Range Resource Management Plan. The Nature Conservancy has nominated the 2,270 acre area and assisted the BLM in preparing the EA. The area is located in Millard County, Utah, and is described as follows:

Salt Lake Meridian.

T. 15 S., R. 18W.,

Sec 17, E½SW¼, E½SW¼SW¼;

Sec. 19, NE¼NE¼SE¼ and a portion of SE¼SE¼;
Sec. 20, W½, W½E½;
Sec. 29, W½, W½E½;
Sec. 30, a portion of the NE¼, NW¼, S½;
Sec. 31, approximately 2,270 acres.

The area contains about 50 spring-fed pools which provide exceptional wetland/riparian habitat. Along with many native species, habitat is provided for several Threatened/Endangered or Sensitive animal species (TES). The management objectives for the area are: (1) Manage wildlife habitat to favor a diversity of game and non-game species, (2) Protect crucial and high priority habitat from encroachment by incompatible uses, and (3) Protect all TES species habitats.

Inventorying, evaluating, and monitoring the species and habitat would be the priority actions of the ACEC Management Plan. Utah Division of Wildlife Resources and the U.S. Fish and Wildlife Service have cooperated in providing data for the EA and will participate in the action proposed in the ACEC.

DATES: The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Alan Partridge, Bureau of Land Management, Richfield District Office, 900 North 150 East, Richfield, Utah 84701.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610. The proposed planning amendment and proposed designation of the Gandy Salt Marsh ACEC is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of the BLM, 18th and C Streets, NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the proposed planning amendment.

G. William Lamb,

Associate State Director.

[FR Doc. 92–29858 Filed 12–8–92; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–930–4210–06; AZA 27311]

Proposed Withdrawal and Opportunity for a Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service (FS) has filed application AZA–27311 to withdraw from location and entry under the mining laws only, approximately 1,240 acres of National Forest System lands for the Haufer Research Natural Area. The withdrawal will be made subject to valid existing rights. No improvements are planned for the property.

This application is in compliance with the regulations found in 43 CFR 2310.1–2 and the Tonto National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only. Other uses applicable to National Forest System lands will continue to be allowed.

DATES: Comments and requests for a meeting should be received on or before March 9, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–640–5509.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, filed application AZA–27311 to withdraw the following described land from location and entry under the United States mining laws only. Other uses applicable to National Forest System lands would be allowed to continue. The withdrawal would be issued subject to valid existing rights.

Gila and Salt River Meridian, Arizona

Tonto National Forest

T. 7 N., R. 10 E.,
Sec. 21, S½SW¼, SE¼;
Sec. 22, SW¼NW¼, SW¼, W½SE¼;
Sec. 27, W½NE¼, NW¼, NE¼SW¼, NW¼SE¼;
Sec. 28, N½;
Sec. 29, E½NE¼.

Containing approximately 1,240.00 acres in Gila County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

The application will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, canceled or the withdrawal is approved prior to that date.

The temporary segregation on the land in conjunction with this application shall not affect the administrative jurisdiction over it.

Jeff Rawson,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92–29784 Filed 12–8–92; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Reclamation

U.S. Fish and Wildlife Service

U.S. Geological Survey

Middle Green River Basin Study, National Irrigation Water Quality Program (NIWQP), Northeastern Utah

AGENCIES: Bureau of Reclamation (Interior), U.S. Fish and Wildlife Service (Interior), U.S. Geological Survey (Interior).

ACTION: Notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation), as lead agency, proposes to conduct a remediation planning study and prepare a draft environmental impact statement (DEIS) on remediation alternatives to correct fish and wildlife problems related to elevated selenium levels contributed by irrigation drainage in the Stewart Lake Waterfowl Management Area (WMA), lower Ashley Creek, and their mixing zones in the Green River near Vernal, Utah. The purpose of the remediation planning study is to determine the most implementable alternative(s) to correct the selenium-created problems related to irrigation drainage resulting from the Vernal and Jensen Units of the Central Utah Project. Previous NIWQP studies have indicated

that selenium in water, bottom sediments, and biota has caused unacceptable hazards to fish, wildlife, and human health in Stewart Lake WMA, Marsh 4720, and lower Ashley Creek.

A public scoping process is being used to elicit information for use in determining the scope of the environmental impacts and issues related to the proposal and to determine alternative methods to accomplish the goals of the project. The results of the scoping process will help the participating agencies determine the scope and extent of the impact analysis.

A notice of intent to prepare a DEIS was published in the **Federal Register** on June 17, 1992 (57 FR 27062). Scoping meetings will be held in January 1993. Written comments will be accepted for 30 days following the scoping meetings.

DATES AND LOCATIONS: Scoping meetings will be held at the following times and locations:

Vernal Unit—Tuesday, January 12, 1993, at 7 p.m. at the Western Park Convention Center, 302 East 200 South, Vernal, Utah.

Jensen Unit—Wednesday, January 13, 1993, at 7 p.m. at the Jensen Water Improvement District Office, 5950 South 8500 East, Jensen, Utah.

Jensen and Vernal Units—Thursday, January 14, 1993, at 7 p.m. at the Hilton Hotel, 150 West 500 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Noyes, Study Manager, Bureau of Reclamation (Mail Code: PPO–710), PO Box 51338, Provo, UT 84605–1338; telephone: (801) 379–1000.

SUPPLEMENTARY INFORMATION: During the last few years, there has been increasing concern in the Western United States about the quality of irrigation drainage from surface and subsurface water and its potential effects on human health and on fish and wildlife. The U.S. Congress shared those concerns, and in 1985, the Department of the Interior (DOI) began studies under the five-phase NIWQP. The purpose of the studies was to identify toxic constituents in irrigation return flows from DOI projects and determine if these constituents at varying concentration levels were causing impacts to human health, fish, and wildlife. Phases I through III of the Middle Green River Basin Study have been completed, and Phase IV, Remediation Planning, has been initiated. These earlier studies have confirmed that samples of water, sediment, and biota from Stewart Lake WMA, lower Ashley Creek, Marsh 4720, and their mixing zones in the Green River contain concentrations of selenium that exceed some related Federal and State criteria and have resulted in adverse impacts to fish and wildlife.

The present Phase IV study started in late 1990. A draft plan of study including a public involvement plan has been developed. Public meetings were held in the study area in June and October, 1992, and informal meetings with numerous Federal, State, and local agencies have been conducted throughout the scoping process. The Phase IV study on the Middle Green River Basin is being managed by a DOI core team under the direction of Reclamation. Other members include the U.S. Geological Survey and the U.S. Fish & Wildlife Service, with various other Federal, State, and local agencies serving as advisors.

The goals and objectives of the Phase IV study are to:

- Reduce selenium in water and bottom sediments in the study area which has caused unacceptable hazards to fish and wildlife.
- Minimize the ecological hazards and satisfy requirements of the Migratory Bird Treaty Act and the Endangered Species Act.
- Minimize public health risks resulting from consumption of fish and wildlife with elevated selenium levels in the study area.
- Select, through a public involvement process, a plan to correct DOI irrigation drainage-related selenium problems in Stewart Lake WMA and Ashley Creek and their mixing zones in the Green River.

A preliminary list of potential remediation options has been developed with public input and will be presented to the public during the scoping meetings. The general types of options identified to date include institutional changes, collection and treatment, disposal, dilution, source control, and a no action alternative (required under NEPA).

A preliminary list of proposed screening concepts or evaluation factors has also been developed, and will be presented at the scoping meetings for comment. These concepts are needed to assist in reducing the number of potential remediation options to a reasonable number for detailed analysis.

A DEIS will be available for review and comment in 1994.

Dated: December 3, 1992.

Darrell W. Webber,

Assistant Commissioner, Engineering and Research.

[FR Doc. 92–29823 Filed 12–8–92; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting will be held at 10:30 a.m., Saturday, December 12, 1992, at J. Paul's Restaurant, 3218 M Street, Georgetown, Washington, DC.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

This will be an orientation meeting for the nine newly appointed Commission members and the ten members who were reappointed. Robert Stanton, Regional Director, National Capital Region will swear in the new commissioners.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Ms. Diane Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gorner, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia 25311
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia
Ms. Donna Pope, Alexandria, Virginia

The agenda for this meeting includes the legislative process that created the C&O Canal Commission by former Commission Chairman, Carrie Johnson; Planning of the Park by John Parsons, Associate Regional Director, National Capital Region; the Role of the Commission, Overview of Park Operations, Update of the Vail Agenda

and Superintendent's Report by Superintendent Thomas Hobbs.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: December 2, 1992.

Chrysandra L. Walter,

Acting Regional Director, National Capital Region.

[FR Doc. 92-29917 Filed 12-8-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-338]

Certain Bulk Bags and Process for Making Same; Commission Determination Not To Review Initial Determinations Granting Joint Motions to Terminate the Investigation With Respect to Two Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determinations (IDs) in the above-captioned investigation granting joint motions to terminate the investigation with respect to respondent Titan Megabags Industrial Corporation on the basis of a license agreement and with respect to respondent Pacific Rim Marketing Corporation on the basis of a settlement agreement.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3107. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On May 21, 1992, Better Agricultural Goals Corporation and Super Sack Manufacturing Corporation (collectively "complainants") filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation and sale of certain bulk bags that infringe claim 8 of U.S. Letters Patent 4,143,796 and claim 20 of U.S. Letters Patent 4,194,652. On June 5, 1992, complaints filed an amended complaint. On June 18, 1992, the Commission determined to institute an investigation of the complaint and publish notice of its investigation in the **Federal Register** (57 FR 28185 (June 24, 1992)).

On October 22, 1992, complainants and respondent Titan jointly moved for termination of this investigation as to Titan on the basis of a license agreement (Motion Docket No. 338-10). On October 23, 1992, complainants and respondent Pacific Rim jointly moved for termination of this investigation as to Pacific Rim on the basis of a settlement agreement (Motion Docket No. 338-12). The Commission investigative attorney filed papers supporting the joint motions. On November 4, 1992, the presiding administrative law judge issued IDs (Order Nos. 9 and 10) granting the motions. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Issued: December 1, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-29899 Filed 12-8-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-552 (Final)]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-552 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain hot-rolled lead and bismuth carbon steel products, provided for in subheadings 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00 and 7228.30.80 of the Harmonized Tariff Schedule of the United States (HTS).[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain hot-rolled lead and bismuth carbon steel products from Brazil are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 13, 1992, by Inland Steel Industries, Inc., including Inland Steel Bar Co., Chicago, IL; and the Bar, Rod and Wire Division, Bethelehem Steel Corp., Johnstown PA.

[1] For purposes of this investigation, the subject hot-rolled lead and bismuth carbon steel products are hot-rolled products of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels, except steels classified as such by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, selenium, or tellurium. Also excluded are semifinished steels and flat-rolled carbon steel products.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 4, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 21, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 11, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 13, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 29, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 29, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 4, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-29900 Filed 12-8-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-337]

Certain Integrated Circuit Telecommunications Chips and Products Containing Same, Including Dialing Apparatus

Notice is hereby given that the prehearing conference and hearing in this matter is presently scheduled to commence 8 a.m., on December 9, 1992, and to continue on December 10 thru the 18, as necessary in Hearing Room B (room 111) at the International Trade Commission Building at 500 E Street, SW., Washington, DC. The dates are subject to change through order of the administrative law judge. Non-parties wishing to attend should contact Mr. Bert Reiser at 202-205-2694 as to whether there have been any changes made in this schedule by the judge.

The Secretary shall publish this notice in the **Federal Register**.

Issued: December 3, 1992.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 92-29901 Filed 12-8-92; 8:45 am]

BILLING CODE 7020-02-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, suite 600, 801 Pennsylvania Avenue, NW., Washington, DC, on Tuesday and Wednesday, January 5 and 6, 1993, from 8:30 a.m. to 5 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1992 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: December 1, 1992.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 92-29829 Filed 12-8-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following

collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Adoption of Common Rule—Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements.

(2) Form 4000/3, 4587/1, 7160/1, 7160/3. Office of Justice Programs.

(3) On occasion.

(4) State or local governments. The information is used to qualify, select, monitor and closeout grant awards concerning Federal assistance. The forms are being revised to reflect the grantee's compliance with the Americans With Disabilities Act.

(5) 1,736 annual responses at 52.0 hours per response.

(6) 90,272 annual burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Department of Justice Federal Coal Lease Review Information.

(2) ATR–139, ATR–140. Antitrust Division.

(3) On occasion.

(4) Businesses or other for-profit. The information collected from prospective coal lessees will be used in the Department's review of the competitive effects of Federal coal lease issuances, transfers and exchanges.

(5) 20 annual responses at 2 hours per response.

(6) 40 annual burden hours.

(7) Not applicable under 3504(h).

(1) Age, Sex and Race of Persons Arrested.

(2) 4–924, 4–924A. Federal Bureau of Investigation.

(3) Monthly.

(4) State or local governments. The forms are needed to collect the age, sex and race of persons arrested. The resulting statistics are published in the annual publication, "Crime in the United States".

(5) 121,776 annual responses at .5 hours per response.

(6) 60,888 annual burden hours.

(7) Not applicable under 3504(h).

(1) Petition for Alien Fiance(e).

(2) I–129F. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. By filing the Form I–129F, a citizen of the United States may facilitate the entry of his/her fiance(e) into the United States so that a marriage between the U.S. citizen and the alien fiance(e) may be concluded.

(5) 20,000 annual responses at .5 hours per response.

(6) 10,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: December 4, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–29839 Filed 12–8–92; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget (INS Form I–130). In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this form should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., room 2001D, Washington, DC 20536, Attention: Form I–130, within 30 days after the date of publication (January 8, 1993) of this notice in the Federal Register.

Revision of a Currently Approved Collection

An expedited review has been requested for this entry.

(1) Immigrant Petition for Relative, Fiance(e) or Orphan
(2) Form I-130. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The I-130 is used for a United States citizen or permanent resident to petition for a relative, finance(e) or orphan for the purpose of their immigration to the U.S. The form replaces separate forms I-129F, I-600 and I-600A
(5) 870,000 annual responses at 1.5 hours per response
(6) 1,305,000 annual burden hours
(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: December 4, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-10-M

U.S. Department of Justice

Immigration and Naturalization Service

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Instructions for Immigrant Petition for Relative, Fiance(e) or Orphan Form I-130

Purpose Of The Form.
This form is for a United States citizen or permanent resident to petition for a relative, fiance(e) or orphan. It consists of a basic form, and different supplements that apply to the specific classifications. You may only file for one person per petition. You must file a separate petition for each eligible person you seek to bring to the U.S.

Who May File.
If you are a United States citizen, you may file a petition for your spouse, or for your unmarried or married son or daughter. If you are a U.S. citizen and you are at least 21 years old, you may file a petition for your brother, sister or parent. If you are a U.S. citizen, in certain instances you may file a petition for your fiance(e) or for a foreign orphan.

If you are a permanent resident of the U.S., you may file a petition for your spouse, for your *unmarried* son or for your *unmarried* daughter.

You cannot file a petition for any other type of relative. However, if you file a petition for your son, daughter, brother or sister, his or her spouse and unmarried sons and daughters who are less than 21 years old will be able to apply for dependent visas when the person you are filing for applies for a visa based on your petition. If you file a petition for your fiance(e), his or her unmarried sons and daughters who are less than 21 years old will be able to apply for dependent visas.

Overview of These Instructions.
This pamphlet is divided into four parts. **Part 1** describes filing requirements and is broken down by the kind of relative (spouse, son or daughter, parent, etc.) you can file for.

Part 2 goes into more detail about the specific kinds of evidence you need to submit with a petition. It also explains a number of general procedures, such as how to prove a change of name, and what kinds of secondary evidence you can submit if the required evidence, such as a birth certificate, does not exist. Read Parts 1 and 2 carefully. If you do not submit a necessary document, your petition will be delayed, and may be denied.

Part 3 provides some additional information to help you fill out the petition form. It also discusses how to actually file the petition, such as where to file it and how to determine the filing fee.

Part 4 describes how your petition will be processed and gives an overview of what will happen if it is approved. More detailed information about later steps will be included when we notify you that your petition has been approved. The instructions in this part also explain the penalties for falsifying or concealing facts or submitting a false document.

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1. FILING.

FILING FOR A SPOUSE.

A United States citizen or permanent resident may file a petition for his or her spouse.

Petition review is to determine if the marriage is legally valid and is a basis for allowing the spouse to immigrate to the United States. Even if a marriage is legally valid, a petition will not be approved if:

- you and your spouse were not both physically present at the marriage ceremony, and the marriage has not been consummated;
- your spouse has ever attempted or conspired to enter into a marriage for the purpose of evading immigration laws;
- there is not sufficient evidence of a relationship of husband and wife to demonstrate that the marriage is not merely for the purpose of obtaining immigration benefits;
- you became a permanent resident within the past 5 years based on a marriage which subsequently ended in divorce or annulment, unless you establish, by clear and convincing evidence, that the prior marriage was not merely for the purpose of obtaining immigration benefits; or
- you married your spouse after November 9, 1986, and when the two of you married he or she was in deportation or exclusion proceedings, unless you establish one of the following:
  - that exclusion or deportation proceeding was canceled, terminated or dismissed;
  - that your spouse has resided outside the U.S. for at least two years since your marriage; or
  - that the marriage was entered into in good faith and not merely to obtain immigration benefits, and that no fee or other consideration was given except to an attorney and that this was solely for the purpose of representing you in this petition proceeding.

You must file your petition with:

- copies of evidence you are a U.S. citizen or permanent resident, *(see GENERAL EVIDENCE)*;
- a copy of your marriage certificate;
- if you or your spouse were ever married before, submit copies of divorce decrees, annulment decrees or death certificates showing that each of your prior marriages, and each of your spouse's prior marriages, was legally terminated before your current marriage;
- *original* photos of you and your spouse *(see GENERAL EVIDENCE)*;
- copies of any joint financial arrangements, contracts or other evidence which you wish to submit to show that your marriage is not merely for the purpose of immigration;
- if you obtained permanent residence through marriage within the last five years, file copies of evidence which clearly shows that the marriage through which you obtained status was not solely to obtain immigration benefits; and
- if you married your spouse when he or she was in deportation or exclusion proceedings, file one of the following:
  - copies of the INS notice or court orders that canceled, terminated or dismissed the exclusion or deportation proceeding;
  - copies of evidence that demonstrates your spouse has resided outside the U.S. for at least 2 years after you were married;
  - copies of *clear and convincing* evidence of a relationship of husband and wife sufficient to demonstrate the marriage was not merely for the purpose of obtaining immigration benefits.

FILING FOR A SON OR DAUGHTER.

A United States citizen may file a petition for son or daughter, regardless of that son or daughter's age or marital status. A permanent resident may file a petition for an *unmarried* son or *unmarried* daughter regardless of that son or daughter's age.

You must file your petition with:

- copies of evidence you are a U.S. citizen or permanent resident *(see GENERAL EVIDENCE)*;
- a copy of your son or daughter's birth certificate, showing his or her name and the name of his or her parent(s);
- if you are the father, and you were married to the mother of your son or daughter when your son or daughter was born, also submit:
  - a copy of the marriage certificate indicating you were married to the mother at the time of birth, and
  - if either you or the mother were married before that marriage, submit copies of death certificates, annulment decrees or death certificates showing that each of your prior marriages, and each of the mother's prior marriages, was legally terminated before your marriage to one another;
- if you are the father, but were not married to the mother when your son or daughter was born, or if you are his or her step-parent or adoptive parent, also *see GENERAL EVIDENCE*.

FILING FOR A PARENT.

A United States citizen who is at least 21 years old can file a petition for his or her parent.

You must file your petition with:

- copies of evidence you are a U.S. citizen *(see GENERAL EVIDENCE)*;
- a copy of your birth certificate, showing your name and the name of your parent(s);
- if you are filing for your father, and he was married to your mother when you were born, also submit:
  - a copy of the marriage certificate indicating that your father was married to your mother when you were born; and,
  - if either your father or mother were married before their marriage to each other, submit copies of divorce certificates, annulment decrees or death certificates showing that all those prior marriages were legally terminated before they married each other;
- if your father was not married to your mother when you were born, or if you are filing for your step-parent or adoptive parent, also *see GENERAL EVIDENCE*.

FILING FOR A BROTHER OR SISTER.

A United States citizen who is at least 21 years old can file a petition for his or her brother or sister.

You must file your petition with:

- evidence you are a U.S. citizen *(see GENERAL EVIDENCE)*;
- a copy of your birth certificate, showing your name and the name of your parent(s);
- a copy of your brother or sister's birth certificate, showing his or her name and the name of his or her parent(s);
- if you and your brother or sister have the same father but different mothers, and your father was married to your respective mothers when you were each born, you must also submit copies of the marriage certificates of the father to each mother and copies of divorce decrees, annulment decrees or death certificates showing that all the prior marriages of your father and your respective mothers were legally terminated before your father married your respective mothers; and
- if you and your brother or sister have the same father, but your father was not married to one or either of your mothers, also *see GENERAL EVIDENCE* for the additional evidence you must submit with your petition with regard to that relationship;
- if you and your brother or sister are related through adoption or through a step-parent, also *see GENERAL EVIDENCE*.

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FILING FOR A FIANCE(E).

A United States citizen may file a petition for a fiance(e) whether he or she is in the U.S. or outside the U.S. However, your fiance(e) must apply for a fiance(e) visa at a U.S. Consulate after this petition is approved in order to be admitted as a fiance(e) and receive status based on this petition.

Review of a petition for a fiance(e) is to determine if both you and your fiance(e) are legally free to enter into the marriage, and have each already decided to marry the other within the 90 days after he or she enters the U.S. in fiance(e) status. Fiance(e) status is not for the purpose of meeting to decide whether to marry.

A petition for a fiance(e) will only be approved if:

- both you and your fiance(e) are unmarried and able to enter into a legally valid marriage;
- you and your fiance(e) have personally met within the last 2 years, unless you demonstrate in your petition that compliance with this requirement would result in extreme hardship to you or would violate your own or your fiance(e)'s strict and long established custom, culture or social practice; and
- both you and your fiance(e) have already made the decision to marry the other within the 90 days after he or she enters the U.S. in fiance(e) status, and intend to thereafter maintain a continuing relationship as husband and wife.

You must file your petition with:

- copies of evidence you are a U.S. citizen *(see GENERAL EVIDENCE)*;
- if you or your fiance(e) were ever married before, submit copies of divorce decrees, annulment decrees or death certificates showing that each of your prior marriages, and each of your fiance(e)'s prior marriages, has already been legally terminated;
- *original* photos of you and your fiance(e) *(see GENERAL EVIDENCE)*;
- copies of evidence showing either that:
  - o you and your fiance(e) have personally met within the last 2 years; or
  - o if you have never met or have not met within the last 2 years, file a detailed explanation and evidence of the extreme hardship or customary, cultural or social practices which prohibited your meeting; and
- *original* signed statements from each of you showing that you plan to marry each other within 90 days of his or her admission and thereafter maintain a continuing relationship as husband and wife, and copies of any evidence you wish to submit to demonstrate your mutual intent to marry the other.

FILING FOR AN ORPHAN.

A United States citizen may file a petition for a foreign orphan which he or she has adopted abroad or intends to adopt in the U.S. after the orphan immigrates. If you are single, you must be at least 25 years old at the time of the adoption and when this petition is filed.

An "orphan" is a child under the age of 16 who has lost both parents or whose sole surviving parent is unable to provide adequate care for the child and has unconditionally released the child for adoption and emigration.

An orphan petition may only be approved for a qualified child who is either:

- outside the U.S. and who either has been adopted abroad or will be coming to the U.S. to be adopted; or
- who is in the U.S. in parole status and has not yet been adopted.

An orphan petition will not be approved for any other child already in the U.S.

You must establish that you can provide adequate care for an orphan, and must also establish that the child you are filing for qualifies as an orphan. You can do this in one petition, or, in certain situations, you can do it in two steps. The two step process lets you establish your ability to provide adequate care in an Advance Processing Application before showing that the child qualifies as an orphan.

You can use the two step approach if:

- a child has not been located and identified for you;
- you and/or your spouse, if married, are traveling abroad to a country with no INS office to adopt a known child while abroad; or
- you and/or your spouse, if married, are traveling abroad to facilitate the immigration of a known child coming to the U.S. when you want to file the

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petition at the U.S. Consulate or Embassy which has jurisdiction over the child's residence.

Filing in 2 steps.

Step 1. Filing an Advance Processing Application. *(Check Box "i" in Part 2 of the I-130 petition form).* You must file your application with:

- copies of evidence of your age and U.S. citizenship *(see GENERAL EVIDENCE)*;
- two sets of your fingerprints on Form FD-258 (available at your local INS office);
- an *original*, valid home study as described below; and
- if you are married, your spouse must also sign the Orphan Supplement, and you must also submit:
  - o two complete sets of his or her fingerprints on Form FD-258;
  - o a copy of your marriage certificate; and
  - o if you or your spouse were ever married before, submit copies of divorce decrees, annulment decrees or death certificates showing that each of your prior marriages, and each of your spouse's prior marriages, was legally terminated before your current marriage.

Home study requirements.

The home study must be conducted by, and include the favorable recommendation of, either an agency of the state in which the child will live or an agency authorized by that state to conduct such a study or, in the case of a child adopted abroad, an appropriate public or a private adoption agency licensed in the U.S. The home study must include:

- a factual evaluation of the financial, physical, mental, and moral capabilities of the prospective parent or parents to rear and educate the child properly;
- a detailed description of the living accommodations where the prospective parent or parents currently reside and where the child will live, if known;
- a statement recommending the adoption signed by an official of the responsible state agency in the state of the child's proposed residence or agency authorized by that state if the child will be adopted in the U.S., or by an official of an appropriate public or private adoption agency licensed in any state in the U.S. if the child has been adopted abroad.

Please note: Since this is an advance processing application, if you are single you can file it if you are at least 24 years old. However, you cannot file the second step petition, or complete the adoption, until you are at least 25.

Step 2. Your second step petition must be properly filed within one year of the approval of the advanced processing application. Since you paid the fee with the advance processing application, there is no fee for the second step petition. However, if you do not file an approvable step 2 petition, with evidence relating to a specific child, within one year after approval of the advance processing application, the approval of the advance processing petition will expire. Any further proceedings will require the filing of a new advance processing application, with fee, or a new 1 step petition, with fee.

Since you demonstrated your ability to provide adequate care in step 1, in this petition you must establish that the child you are filing for qualifies as an orphan. *(Check Box "j" in Part 2 of the petition form.)* You must file your petition with:

- a copy of the approval notice showing your advance processing application was approved;
- a copy of the child's birth certificate or, if a certificate is not available, other proof of the child's age and parentage (*Please note:* The child must be less than 16 years old when this petition is filed);
- if any of the child's parents are deceased, submit a copy of the death certificate for each deceased parent;
- if the child has only one parent, submit copies of evidence that he or she is incapable of providing for the child and *original* evidence that he or she has unconditionally and irrevocably released the child for emigration and adoption;
- a copy of the adoption decree, if the child has been adopted abroad (If you are married, the adoption decree must show that the adoption was undertaken jointly by you and your spouse);
- if the orphan is to be adopted in the U.S., file evidence you have complied with any pre-adoption requirements of the state where the child will live, unless they cannot be complied with until the child arrives in the U.S.; and
- if you are single, file evidence that adoption by an unmarried person is permitted in the state where you and the child will live.

Filing in 1 step.

If you have identified a child and all processing will be completed in the U.S., *check Box "h" in Part 2 of the petition form*, and file your petition with all of the evidence listed above in the entire two step approach to establish your ability to provide adequate care for an orphan and to establish that the child qualifies as an orphan.

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2. GENERAL EVIDENCE.

Evidence of U.S. Citizenship.
If you are a United States citizen, you must file your petition with evidence of your citizenship. This may include:

- a copy of your birth certificate, if you were born in the U.S.;
- a copy of your naturalization certificate or certificate of citizenship issued by INS;
- a copy of your Form FS-240, Report of Birth Abroad of a Citizen of the United States, issued by an American Consul;
- a copy of your unexpired U.S. passport; or
- an original statement from a U.S. consular officer verifying that you are a U.S. citizen with a valid passport.

Evidence of Permanent Residence.
If you are a permanent resident, you must file your petition with a copy of the front and back of your alien registration receipt card (Form I-551 or Form I-151). If you have not yet received your card, submit copies of your passport biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by INS.

Evidence of Change of Name.
If either you or the person you are filing for are using a name other than that shown on the relevant documents, you must file your petition with copies of the legal documents that made the change, such as a marriage certificate, divorce decree, adoption decree or court order.

Evidence of a Stepparent-Stepchild Relationship.
If your petition is based upon a stepparent-stepchild relationship, you must file your petition with:

- a copy of the marriage certificate of the stepparent to the child's natural parent showing that the marriage occurred before the child's 18th birthday; and
- copies of death certificates, annulment decrees or death certificates, showing that any prior marriages of the stepparent or birth parent which he or she married were each legally terminated.

Evidence where the Biological Father was not Married to the Mother When a Son or Daughter was Born.
If your petition is based upon the relationship of a biological father to his son or daughter, and the father was not married to the mother when the son or daughter was born, you must file your petition with:

- copies of evidence the son or daughter was legitimated by the father before age 18; or
- copies of evidence a bona fide parent-child relationship existed between the father and the son or daughter before the son or daughter reached 21. Evidence may include proof the father lived with the son or daughter, supported him or her, or otherwise showed continuing parental interest in the son or daughter's welfare.

Evidence of Adoption.
If you and the person you are filing for are related by adoption, and you are not filing an orphan petition, you must file your petition with:

- a copy of the adoption decree(s) showing the adoption took place before the child reached 16; and
- copies of evidence the child was in the legal custody of, and resided with, the parent(s) who adopted him or her for at least 2 years before or after the adoption.

Legal custody may only be granted by a court or recognized governmental entity and is usually granted at the time the adoption is finalized. However, if legal custody is granted by a court or recognized government agency prior to the adoption, that time may be counted towards fulfilling the 2 year legal custody requirement.

Documentary Requirements and Secondary Evidence.
The documents filed with your petition should be those issued by the civil registrar, vital statistics office, or other civil authority. You should submit all the required evidence with your petition.

If such documents are unavailable, you must file your petition with documentation from those authorities to establish why the required evidence is unavailable, and must also submit secondary evidence to establish the facts in question. Submit as many types of secondary evidence as possible to verify the claimed relationship.

Listed below are some common types of secondary evidence. Any evidence submitted must contain enough information (birth dates, parents' names, etc.) to establish the event you are trying to prove. Normally the most

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persuasive types of evidence is that which dates from close to the time of the event you are trying to prove. We will evaluate the secondary evidence you submit for authenticity and credibility.

Some common types of secondary evidence include:

- ***Baptismal Certificates.*** A certificate under the seal of the church where the baptism occurred. It must show the date and place of the child's birth, date of baptism, and the name(s) of the child's parents.
- ***School Records.*** Early school records (preferably from the first school attended) showing the date of admission to the school, the child's birth date or age at time of admission, and, if shown in school records, the place of birth and the names and places of birth of parent(s).
- ***Census Records.*** Early state or federal census record showing the name(s), place(s) of birth and date(s) of birth or age(s) of the person(s) listed.

If all forms of primary and secondary evidence are unavailable, you must file your petition with original evidence to establish such unavailability, and also submit at least 2 affidavits sworn to, or affirmed, by persons who were living at the time and have direct personal knowledge of the event you are trying to prove (date and place of birth, marriage, death, etc.). These persons may be relatives and need not be citizens of the United States. Each affidavit must give the person's full name and address, date and place of birth, and any relationship to you. Each affidavit must also fully describe the circumstances or event in question and fully explain how he or she acquired knowledge of the event.

Photos.

If you are filing for your spouse or fiance(e), you must submit a natural color photo of yourself and a separate natural color photo of your spouse or fiance(e). The photos must have been taken within the 30 days before you file your petition. They must be "ADIT" style photos. They must have a white background, be unmounted, be printed on thin paper, and be glossy and unretouched. They must show a three-quarter frontal profile showing the right side of your face, with your right ear visible and with your head bare (unless you are wearing a headdress as required by a religious order of which you are a member). The photos should be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 and 1/4 inches.

Lightly print the name and any A# or Social Security # on the back of each photo with a pencil.

Evidence of Exclusion or Deportation Proceedings.

If the person for whom you are filing this petition is now, or has been, in deportation or exclusion proceedings, submit a copy of documentation showing the date the proceedings commenced and the current status or final disposition.

Translations.

Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct and by the translator's certification that he or she is competent to translate from the foreign language into English.

Submitting Copies instead of Original Documents.

If these instructions state that a copy of a document may be filed with this petition and you choose to send us the original, we may keep that original for our records.

Blood Tests.

After we review your petition, we may determine that a blood test or a genetic code test is necessary for you to substantiate parentage. If we determine either of these tests is necessary, we will provide you with further information.

3. FILING INSTRUCTIONS.

FILLING OUT THE FORM.
Please answer all questions by typing or clearly printing in black ink. Complete the basic form and the appropriate supplement. Indicate that an item is not applicable with "N/A." If an answer to a question is "none," please so state.

If you need extra space to answer any item, attach a sheet of paper with your name, date of birth and your A#, if any, and indicate the number of the item to which the answer refers.

You must file your petition with the required Initial Evidence. Your petition must be properly signed and filed with the correct fee. If you are married and filing an orphan petition, your spouse must also sign the petition.

Part 1.
This part requires information about the U.S. citizen or permanent resident filing the petition. Enter your *A#* (alien registration number) if you are a permanent resident or naturalized U.S. citizen.

Part 2.
Indicate the specific type of relationship you have to the person you are filing for. Check only one box.

Part 3.
This part requires information about the person you are filing for. You must file a separate petition for each person you want to file for. The *I-94#* is the number of the Nonimmigrant Arrival-Departure Document given a person when he or she enters the U.S. If the person is in the U.S., but was not given an I-94, write "none". If the person entered the U.S. without being inspected by an immigration officer, enter "EWI".

Part 4.
This part asks for additional information about your status in the U.S., and about the type of evidence you are submitting with your petition to show your status.

Part 5.
This part asks you to tell us what you want done with your petition after approval. Check one box. If you indicate the person is or will be applying for adjustment, we will hold the petition in the file. If you indicate that the petition should be sent to an American Consulate for issuance of an immigrant visa, we will send your approved petition to the Department of State.

Part 6.
You must sign your application.

Part 7.
Any person who helped you prepare this petition must provide the information requested. An attorney or other authorized representative must complete and submit Form G-28, *Notice of Entry of Appearance*, with your petition.

Supplement A. Spouse/Fiance(e)
This supplement must be submitted with your petition if you are filing for your spouse or fiance(e). You may submit copies of any joint financial arrangements, contracts or other evidence which you wish to submit to show that your marriage is not merely for the purpose of immigration.

If your spouse is in the U.S., he or she must sign the back of the supplement.

Supplement B. Other Relative
This supplement must be submitted with your petition if you are filing for a son, daughter, parent, brother or sister.

Supplement C. Orphan
This supplement must be submitted with your petition for an orphan. You, and your spouse, if you are married, must both sign the supplement in *Section 5*.

If you are filing under the 2 step process, you do not need to complete *Section 4* with your step 1 Advance Processing Application. When you file your second step petition, or if you are filing a 1 step petition, complete the entire supplement.

WHERE TO FILE.
Petition for relative or fiance(e). If the relative you are filing for is already in the U.S. and is eligible to adjust status in the U.S., file your relative petition and his or her adjustment of status application together at the local INS office where he or she lives. For more information about eligibility to adjust status, see Form I-485, Application to Register Permanent Residence or Adjust Status. In all other instances file a petition for a relative, and any petition for a fiance(e), as follows:

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail this petition to:

USINS Eastern Service Center
75 Lower Welden Street
St. Albans, VT 05479-0130

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If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail this petition to:

USINS Southern Service Center
P.O. Box 152122, Dept. A
Irving, TX 75015-2122

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail this petition to:

USINS Western Service Center
P.O. Box 10130
Laguna Niguel, CA 92607-0130

If you live elsewhere in the U.S., mail this petition to:

USINS Northern Service Center
P.O. Box 82521
Lincoln, NE 68501-2521

If you live outside the U.S., and are filing other than a fiance(e) petition, you may mail your petition to the INS Service Center listed above which has jurisdiction over the last place you lived in the U.S., or you may file it at the INS overseas office which has jurisdiction over where you now live. Contact your nearest U.S. consulate for more information and the address of the appropriate INS overseas office.

Petition for an Orphan. If you live in the U.S., file your petition at the local INS office which has jurisdiction over where you live. If you now live in Canada, file your petition at the local INS office which has jurisdiction over where you and the child will live in the U.S.

If you now live outside the U.S. or Canada, you may file your petition at the local INS office which has jurisdiction over where you and the child will live in the U.S., or you may file your petition with the overseas office of this Service which has jurisdiction over where you now live. You may inquire at a U.S. consulate for the address of the appropriate INS overseas office.

If an advance processing application is approved, the step 2 petition may be filed at the same Service office or at the appropriate INS overseas office or, in some instances, at the U.S. consulate which has jurisdiction over the place the child now lives.

FEE.

If you are filing a petition for a relative or fiance(e), the fee is $75.00.

If you are filing an entire orphan petition or an advance processing application for an orphan, the fee is $140.00. There is no fee for a subsequent petition for a named orphan based on an approved advance processing application.

The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

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4. OTHER INFORMATION.

Processing Information.

Acceptance. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition; however, a petition is not considered properly filed until it has been accepted by the Service.

Initial processing and requests for more information or an interview. Once a petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or if you file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your petition. At a minimum it will significantly delay processing of your petition.

We may also request more information or evidence beyond that indicated in these instructions, or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you establish that the person you are filing for qualifies for the classification requested, your petition will be approved. If you do not establish eligibility, the petition will be denied. You will be notified in writing of the decision.

Meaning of a Petition.

The filing or approval of your petition does not authorize the person you filed for to enter or remain in the United States, nor does approval grant employment authorization.

Approval of this petition completes the first step towards allowing the person you are filing for to become a permanent resident. The approved petition establishes a basis upon which he or she can apply for an immigrant or fiance(e) visa or for adjustment of status.

The second step in the process is applying for an immigrant or fiance(e) visa, or, except for a fiance(e), for adjustment of status. Adjustment is an equivalent process which allows certain aliens already in the U.S. to apply to obtain permanent residence while remaining in the U.S. instead of having to go back abroad in order to apply for an immigrant visa. [Note: Adjustment of status based on an orphan petition is limited to a person in the U.S. in parole status.]

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes looks at additional eligibility criteria.

If you are a U.S. citizen, and your approved petition is for your spouse, parent, unmarried son under age 21 or for your unmarried daughter under age 21, the person you filed for will be immediately eligible to apply for an immigrant visa, or if in the U.S., may be eligible to apply for adjustment of status.

However, in many other categories the demand to immigrate to the U.S. by those who have the necessary relative to petition for them is far greater than the number of individuals allowed to immigrate within a given year. This creates a waiting line for persons with approved petitions.

Your approved petition for a relative gives him or her a place in line for a visa behind others with previously approved petitions for the same classification. The place in line is determined by the priority date of the petition, which is the date it was properly filed. Based on an approved petition, the person can, when his or her place in line is reached, apply for a visa, or, if he or she is already in the U.S., he or she may be able to apply to adjust status instead of traveling abroad to apply for an immigrant visa.

For information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I-485, *Application to Register Permanent Residence or Adjust Status.*

If you file a petition for your son, daughter, brother, sister or fiance(e), his or her spouse and unmarried sons and daughters who are less than 21 years old will be able to apply for dependent visas or adjustment when the person you are petitioning for applies for a visa or adjustment based on your petition.

Processing After Approval.

Petition for Relative. If you ask in your petition that we send it to a U.S. Consulate for immigrant visa processing after we approve it, we will forward it to the Department of State. They will notify your relative of the visa process after they have completed preliminary processing. They will then forward it to the appropriate U.S. Consulate when the person can apply for a visa.

If you indicate in your petition that the person you are filing for is already in the U.S. and will apply to adjust

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his or her status to permanent resident, we will keep the petition on file and notify you to have him or her file Form I-485, *Application to Register Permanent Residence or Adjust Status*.

If, after approval, the person this petition is for decides to apply for an immigrant visa abroad, you must file Form I-824, *Application for Action on an Approved Application or Petition*, to request that the approved petition be transferred to the Department of State.

Petition for Fiance(e). Your fiance(e) may not receive status based on this petition while in the U.S. We will send your approved petition to the Department of State. They will notify your fiance(e) of the visa process after they have completed preliminary processing. They will then forward it to the appropriate U.S. Consulate so your fiance(e) and his or her minor unmarried children may apply for a fiance(e) visa. If the consulate issues a visa and your fiance(e) is admitted, he or she will be admitted for 90 days. Your fiance(e) must marry you within this 90 days or he or she, and any accompanying children, must leave the U.S. No extension of this 90 period is allowed.

After your marriage, he or she (and his or her minor unmarried children who entered with him or her on fiance(e) dependent K-2 visas), must file an application to adjust on Form I-485, *Application to Register Permanent Residence or Adjust Status*. Your fiance(e) and children should not plan to travel outside the U.S. between the time of initial entry with a fiance(e) visa and approval of the adjustment of status application.

Petition for Orphan. If you use the 1-step petition process, your approved petition will be sent to the Department of State for forwarding to the appropriate U.S. Consulate.

If you use the two-step process, and indicate that you (and/or your spouse) will:

- travel abroad and wish to have jurisdiction assumed by a U.S. Consulate or INS overseas office, we will forward your approved advanced processing application to our overseas office or to the Department of State for forwarding to the appropriate U.S. Consulate;
- not travel abroad, or you wish to file the second step petition in the U.S., the advance processing petition will be kept on file by the approving INS office for one year.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 U.S.C. 1154, 1157 and 1158. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.

We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 20 minutes to learn about the law and form; (2) 25 minutes to complete the form; and (3) 45 minutes to assemble and file the petition; for a total estimated average of 1 hours and 30 minutes per petition. If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-XXXX, Washington, D.C. 20503.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115 XXXX
Immigrant Petition for Relative, Fiance(e) or Orphan

START HERE - Please Type or Print

Part 1. Information about you.

The United States citizen or permanent resident filing this petition.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code
Social Security #	A #	Naturalization Certificate #

Part 2. Petition type (check one).

I am a citizen of the United States and am petitioning for:

a ☐ my spouse
b ☐ my unmarried son or daughter who is less than 21 years old
c. ☐ my unmarried son or daughter who is 21 years old or older
d ☐ my married son or daughter
e ☐ my parent
f ☐ my sister or brother
g. ☐ my fiance or fiancee
h ☐ a specific named orphan in one petition
i. ☐ an advance processing application for an orphan
j. ☐ a named orphan based on an approved advance processing application

I am a Permanent Resident or Conditional Resident and am petitioning for:

k. ☐ my spouse
l. ☐ my unmarried son or daughter who is less than 21 years old
m. ☐ my unmarried son or daughter who is 21 years old or older

Part 3. Information about the person you are filing for.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	ZIP/Postal Code
Date of Birth (Month/Day/Year)	Country of Birth
Social Security #	A #

If in the U.S.		
	Date of Arrival (Month/Day/Year)	I-94 #
	Current Immigration Status	Expires on (Month/Day/Year)

Form I-130 (Rev 11-20-92) N

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ Beneficiary ☐ Petitioner	
File Reviewed ☐ Beneficiary ☐ Petitioner	☐ 204(a)(2)(A) Resolved ☐ 204(g) Resolved ☐ I-485 Concurrently Filed

Classification
201(b) ☐ spouse ☐ Child ☐ Parent
☐ 203(a)(1) USC-Unmarried Son, Daughter
203(a)(2)(A) ☐LPR-Spouse, ☐ LPR Child ☐ Leg. Deriv.
☐ 203(a)(2)(B) LPR - Unmarried Son, Daughter
☐ 203(a)(3) USC - Married Son, Daughter
☐ 203(a)(4) USC Sibling
☐ Fiance(e)
Orphan ☐ Full App. ☐ Adv Proc. App.
☐ Pet. Based on Appl. Adv. Proc. App.

Priority Date	Consulate

Action Block

To Be Completed by *Attorney or Representative*, if any
☐ Fill in box if G 28 is attached to represent the petitioner

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ATTY State License #

Part 4. My U.S. citizenship or immigration status.

A Documentation - Check one box

I am a **United States Citizen.** Attached is a copy of:

a. ☐ my birth certificate showing I was born in the U S.
b. ☐ my naturalization certificate.
c. ☐ my citizenship certificate.
d. ☐ my United States passport.
e. ☐ my United States citizen I.D card.
f. ☐ my Report of Birth Abroad of a Citizen of the U S.A (FS 240).

g. ☐ I am a **United States Citizen** but do not have any of the above documents. Attached is a written explanation of my claim to citizenship and copies of supporting documentation.

I am a **Permanent Resident or Conditional Resident** of the U S

h ☐ I attached a copy of both sides of my Alien Registration Card or other evidence of that status.

B Have you ever surrendered, renounced, abandoned or otherwise given up the status claimed above, or has such status expired or ever been revoked or otherwise taken away by the U S .government?

☐ No ☐ Yes (explain on separate paper)

Part 5. Processing information.

A Check one:

☐ The person named in Part 3 is now in the U S., and an application to adjust status to permanent resident is attached or will be filed if this petition is approved.

☐ Send this petition or orphan advance processing application to the American Consulate I have named at below

American Consulate at: City:_____ **Country:**_____

☐ Send this orphan advance processing application or orphan petition to the INS overseas office I have named below

INS overseas office at City:_____ **Country:**_____

B If you gave a U S address in Part 3, give the person s foreign address below If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name:_____ Address:_____

C Are you filing any other relative petitions with this one? ☐ No ☐ Yes - How many?

D Is the person you listed in Part 3 in exclusion or deportation proceedings? ☐ No ☐ Yes - explain on separate paper

E Did you receive permanent or conditional resident status within the past five years based on marriage to a U S. citizen, permanent resident or conditional resident? ☐ No ☐ Yes - explain on separate paper

Part 6. Signature.

Read the information on penalties in the instructions before completing this section and sign below If you are filing an orphan petition and you are married, your spouse must also sign this petition. If someone helped you prepare this petition, he or she must complete Part 7

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Name	Date	Daytime Telephone No.
			( )

Please Note: You must attach one supplement to this petition. If you do not completely fill out this form and the supplement, or fail to submit required documents listed in the instructions, your relative cannot be found eligible for the requested benefit and this petition will have to be denied.

Part 7. Signature of person preparing form if other than above. (Sign below)

declare that I prepared this application at the request of the above person and that it is based on all information of which I have knowledge.

Preparer's signature	Print Name	Date	Daytime Telephone No.
			( )

Firm Name
and Address

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U.S. Department of Justice
Immigration and Naturalization Service

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Spouse/Fiance(e)
Supplement to Form I-130

Section 1. Additional information about you (the U S. citizen or permanent resident).

Family Name	Given Name	Initial	Home Phone ( )	Work Phone ( )
List all other names ued (i.e. maiden name, aliases)		Date of Birth *Month/day/year*		Country of Birth

Sex: ☐ Male ☐ Female

Number of prior marriages *(not including your current marriage)*: ☐ None ☐ One ☐ Two ☐ Three or more How many? _____

Education: Did you graduate from high school? ☐ Yes ☐ No

Do you have a bachelor's degree? ☐ Yes ☐ No

What is your current general occupation? (check one):

☐ Professional with at least a bachelor's degree
☐ Retail, food service or other service
☐ Manufacturing or construction
☐ Clerical
☐ Homemaker
☐ Other (specify):
☐ Not currently employed

Section 2. Information about your spouse or fiance(e).

Family Name	Given Name	Initial	Home Phone ( )	Work Phone ( )
List all other names used (i.e. maiden name, aliases)		Date of Birth *Month/day/year*		Country of Birth

Sex. ☐ Male ☐ Female

Number of prior marriages *(not including his or her current marriage)*: ☐ None ☐ One ☐ Two ☐ Three or more - How many? _____

Education: Did he or she graduate from High School? ☐ Yes ☐ No

Does he or she have a bachelor's degree? ☐ Yes ☐ No

Current general occupation *(check one)*:

☐ Professional with at least a bachelor's degree
☐ Retail, food service or other service
☐ Manufacturing or construction
☐ Clerical
☐ Homemaker
☐ Other (specify):
☐ Not currently employed

Section 3. Sons and daughters.

List all your children, including sons and daughters and all those of your spouse/fiance(e), whether or not you intend to apply for any immigration benefit for them. Start with the youngest. If necessary, continue on separate paper.

Name		A #	
Date of Birth	Country of Birth	Parent ☐ Me ☐ Spouse/Fiance(e) ☐ Both	Living with you? ☐ Yes ☐ No
Name		A #	
Date of Birth	Country of Birth	Parent ☐ Me ☐ Spouse/Fiance(e) ☐ Both	Living with you? ☐ Yes ☐ No
Name		A #	
Date of Birth	Country of Birth	Parent ☐ Me ☐ Spouse/Fiance(e) ☐ Both	Living with you? ☐ Yes ☐ No
Name		A #	
Date of Birth	Country of Birth	Parent ☐ Me ☐ Spouse/Fiance(e) ☐ Both	Living with you? ☐ Yes ☐ No
Name		A #	
Date of Birth	Country of Birth	Parent ☐ Me ☐ Spouse/Fiance(e) ☐ Both	Living with you? ☐ Yes ☐ No

Section 4. Information about your marriage or engagement.

If Engaged	We first met on	We were engaged on	We last saw one another on	How often do you communicate?
If Married	We first met on	We were married on	We were married in (City, U.S. state, or country)	
	Type of Ceremony ☐ Religious ☐ Civil ☐ None		We are: ☐ Now living together ☐ Not living together	
If Married or Engaged	We intend to: *(Check one)* ☐ Live together in a home or apartment ☐ Live together with my family ☐ Live together with my spouse's family ☐ Live together with non-relatives ☐ Live separately from each other		We now have the following joint financial assets or contracts *(check all that apply and submit copies of any joint financial arrangements you wish considered).* ☐ Checking and/or savings account ☐ Lease for apartment we occupy ☐ Mortgage for home we occupy ☐ Credit cards ☐ Consumer loans	

List three people (such as relatives, friends, neighbors, co-workers, and employers) who know of your relationship.

a.	Name	Relationship	How long known?
	Address		Phone Number ( )
b.	Name	Relationship	How long known?
	Address		Phone Number ( )
c	Name	Relationship	How long known?
	Address		Phone Number ( )

List your former marriages (you being the U.S. citizen, permanent resident, refugee or asylee in Part 1). If necessary, continue on separate paper.

a.	Name	Married on	Ended on
	Ended by (divorce, death, etc.)	Did you or this spouse immigrate based on this marriage? ☐ Yes ☐ No	
b.	Name	Married on	Ended on
	Ended by (divorce, death, etc.)	Did you or this spouse immigrate based on this marriage? ☐ Yes ☐ No	

Have you ever visited your current spouse/fiance(e)'s home country? ☐ Yes ☐ No

Have you ever filed another petition for him/her? ☐ Yes ☐ No	If yes, give date	INS Office	File #	Decision
Has he/she ever been deported or excluded from the United States, or is he/she now in proceedings? ☐ No ☐ Yes- Excluded ☐ Yes - Deported ☐ Yes - In proceedings			Date(s)	Place

Section 5. Signature of spouse *If your spouse is in the United States, he or she must sign below.*

I certify, under penalty of perjury under the laws of the United States of America, that the above information is true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit sought.

Signature	Print Name	Date

U.S. Department of Justice
Immigration and Naturalization Service

Other Relative (Son, Daughter, Parent, Brother or Sister)
Supplement to Form I-130

Section 1. Petition summary.

This petition is filed by:	Family Name	Given Name	Initial	Home Phone ( )
	List all other names used (i.e. maiden name, aliases)	Date of Birth *Month/day/year*		Sex ☐ Male ☐ Female
For:	Family Name	Given Name	Initial	Date of Birth *Month/day/year*

Section 2. Additional information about the person I am filing for.

List all other names used (i.e. maiden name, aliases)	Is this person married? ☐ Yes ☐ No	Has he/she been married before? ☐ Yes ☐ No
Name of his/her current or last spouse	Sex ☐ Male ☐ Female	A # (if any)

List all the children of the person you are filing for. If necessary, continue on separate paper.

1. Name	Date of Birth	Country of Birth	A # (if any)
2. Name	Date of Birth	Country of Birth	A # (if any)
3. Name	Date of Birth	Country of Birth	A # (if any)
4. Name	Date of Birth	Country of Birth	A # (if any)
5. Name	Date of Birth	Country of Birth	A # (if any)

Section 3. Complete only if filing for your parent.

The person I am filing for is my: *(check one)*

- ☐ biological mother
- ☐ biological father who was married to my mother when I was born.
- ☐ biological father who was not married to my mother when I was born.
- ☐ adoptive parent:
  - 1) did the adoption occur before your 16th birthday? ☐ Yes ☐ No
  - 2) did he/she have legal custody of you for at least 2 years? ☐ Yes ☐ No
  - 3) did you live with him/her for at least 2 years? ☐ Yes ☐ No
- ☐ stepparent based on marriage to my parent which occurred before my 18th birthday.
- ☐ parent based on circumstances not described above (explain in detail on separate paper)

Did you gain permanent residence through adoption or as an orphan? ☐ Yes ☐ No

Section 4. Complete only if filing for your son or daughter.

I am this person's: *(check one)*

- ☐ biological mother.
- ☐ biological father who was married to his/her mother when he/she was born.
- ☐ biological father who was not married to his/her mother when he/she was born.
- ☐ adoptive parent:
  - 1) did the adoption occur before his/her 16th birthday? ☐ Yes ☐ No
  - 2) did you have legal custody of him/her for at least 2 years? ☐ Yes ☐ No
  - 3) did he/she live with you for at least 2 years.? ☐ Yes ☐ No
- ☐ stepparent based on marriage to his/her parent which occurred before his/her 18th birthday.
- ☐ parent based on circumstances not described above (explain in detail on separate paper)

Section 5. Complete only if filing for your brother or sister.

The person I am filing for and I have: (check one)

☐ The same two parents ☐ The same mother ☐ The same father

Supplement C on Back

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service

Orphan
Supplement to Form I-130

Section 1. Additional Information about You, the U.S. Citizen.

Family Name	Given Name	Initial	Home Phone ( )	Work Phone ( )
List all other names used (i.e. maiden name, aliases)				Date of Birth *Month/day/year*

Are you married? ☐ Yes ☐ No Number of Prior Marriages How many children do you and your spouse have?

Name and Address of organization or individual assisting in locating an orphan for this petition.

Have you (and/or your spouse) ever been arrested or ever before filed a petition for a foreign orphan? *If yes, explain in detail on separate paper*
Arrested: ☐ Yes ☐ No Prior orphan petition: ☐ Yes ☐ No

Section 2. Information about My Husband or Wife. Complete if married.

Last Name	Given Name	Initial	Date of Birth *Month/day/year*
List All Other Names Used (i.e. maiden name, aliases)		A # (if any)	Number of Prior Marriages

Are you now living together? ☐ Yes ☐ No Do you and this spouse intend to jointly adopt? ☐ Yes ☐ No *If you answer "no" to either question, explain in detail on separate paper*

Section 3. Complete only if filing for an unnamed orphan.

How many children do you plan to adopt at this time? Will the adoption be completed abroad? ☐ Yes ☐ No

Do you (and/or your spouse) plan to travel abroad to locate or adopt a child? ☐ Yes ☐ No If yes, give departure date

Section 4. Complete only if filing for a named orphan.

Last Name of Child	Given Name	Initial	Date of Birth *Month/day/year*
List name at birth and all other names used		Sex ☐ Male ☐ Female	Country of Birth

The child:
☐ has no surviving parents ☐ has a sole or single surviving parent (Explain the loss or absence of parents on separate paper.)

Answer the following questions. If your answer is yes, attach a separate explanation.

1. If there is a sole or single surviving parent, has he/she irrevocably released the child for emigration and adoption? *(Attach a copy of the release.)* ☐ Yes ☐ No
2. Is that irrevocable release limited to you (and/or your spouse)? ☐ Yes ☐ No
3. Does this child have any physical or mental affliction? ☐ Yes ☐ No
4. Are either you (or your spouse) related to this child? ☐ Yes ☐ No
5. Is this child living with his/her parent or other family members? ☐ Yes ☐ No
   If you answered no above, is this child living in an orphanage? ☐ Yes ☐ No
6. Have you (and your spouse) already adopted this child? *(If yes, give date and place in explanation.)* ☐ Yes ☐ No
   If you have adopted this child, did you (and your spouse) personally see the child before adoption? ☐ Yes ☐ No
7. If you are going to adopt this child in the U.S., have any preadoption requirements of the state of proposed residence not yet been met? ☐ Yes ☐ No

Section 5. Signature of person filing petition and of any spouse.

I certify, or if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that I will adopt and care for any children admitted to the United States based on this petition. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit sought.

Signature of person named in part 1	Date	Signature of Spouse named in Part 2	Date	Daytime Telephone No.

Supplement B on back

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181 (m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 3rd day of December 1992.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[11/01/92 to 11/30/92]

CEO-name/facility name/address	State	Approval date
Mr. Bill Behnke, Tucson General Hospital, 3838 N. Campbell, Tucson 85719, 602–327–5431	AZ	11/06/92
Mr. Jess R. Villaluna, California Nursing Express, Inc., Int'l, National City 91950, 619–475–6004	CA	11/03/92
Donald Bernstein, DDS, Granada Hills Community Hosp., 10445 Balboa Blvd., Granada Hills 91344, 818–360–1021	CA	11/06/92
Ms. Gerry Garcia, Cloverleaf Enterprises Inc., 5800 W. Wilson, Banning 92220, 714–845–1606	CA	11/10/92
Mr. Scott Rhine, Lompoc Hospital District, 508 East Hickory Avenue, Lompoc 93438, 805–737–3344	CA	11/24/92
Ms. Gerry Garcia, Golden State Care Center, Foothill Care Ctr., Inc., Baldwinn Park 91706, 818–962–3274	CA	11/30/92
Ma. Cristina Desuasido, Staffing Specialists, Inc., 347–D Gellert Blvd., Daly City 94015, 415–997–3387	CA	11/30/92
Mr. H. Phil Herre, Aurora Presbyterian Hosp., 700 Potomac, Aurora 80010, 303–363–7200	CO	11/03/92
Mr. James Fleetwood, Plantation General Hospital, 401 N.W. 42nd Avenue, Plantation 33317, 305–797–6450	FL	11/03/92
Mr. A. Jason Geisinger, Menorah House—Hillhaven, 45 Central Park Blvd., North, Boca Raton 33428, 407–483–0498	FL	11/03/92
Mr. Rudy Noriega, Golden Glades Reg'l Med. Ctr., Miami 33169, 305–654–3065	FL	11/13/92
Ms. Freda Ebert, Halifax Convalescent Ctr., 820 North Clyde, Daytona Beach 32117, 904–274–4575	FL	11/24/92
Ms. Crystal Sims, Brian Center—Austell, 2130 Anderson Mill Road, Austell 30073, 404–941–8813	GA	11/03/92
Mr. Ken Wood, Candler Hospital, 5353 Reynolds Street, Savannah 31412, 912–356–6000	GA	11/30/92
Ms. Joan Tedrow, Jefferson County Hospital, 400 Highland, Fairfield 52556, 515–472–4111	IA	11/24/92
Mr. Ronald Shabat, Peterson Park Health Care Ctr., Chicago 60646, 312–478–2000	IL	11/03/92
Mr. John Samatas, Lexington Health Care of Streamwood, Streamwood 60107, 708–495–1700	IL	11/03/92
Don L. Hollandsworth, D.O., Hyde Park Kidney Ctr., Ltd., 1439 E. 53rd St., Chicago 60615, 312–947–0770	IL	11/06/92
Mr. Jack Schnell, Clark Manor Conval. Ctr., 7433 N. Clark Street, Chicago 60629, 312–338–8778	IL	11/06/92
Mr. Wendell P. Monyak, Bohemian Home for the Aged, 5061 North Pulaski Road, Chicago 60630, 312–588–1220	IL	11/30/92
Mr. Dermot O'Grady, O'Grady Peyton Int'l USA Inc., 651 Boylston Street, Boston 02116, 617–262–3533	MA	11/30/92
Stephan L. Werner, M.D., Drs. Werner, Murdock & Franci, 7500 Hanover Pkwy., Greenbelt 20770, 301–441–8900	MD	11/05/92
Mr. Charles M. Harris, The Union Hospital of Cecil County, Elkton 21921, 410–398–4000	MD	11/30/92
Ms. Leslie Poling, Whitmore Lake Care Ctr., 8633 North Main Street, Whitmore Lake 48189, 313–449–4431	MI	11/06/92
Mr. Michael Payne, North Kansas City Hosp., 2800 Clay Edwards Dr., North Kansas City 64116, 816–691–2061	MO	11/13/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued
[11/01/92 to 11/30/92]

CEO-name/facility name/address	State	Approval date
Mr. G. Wayne Schuler, North Sunflower County Hosp., 840 N. Oak Avenue, Ruleville 38771, 601-756-2711	MS	11/03/92
Ms. Shirley J. Graham, Mississippi State Veterans Home, Jackson 39209, 601-353-6142	MS	11/03/92
Ms. Ronnette Cox, Conval. Ctr. of Halifax, 101 Carolina Ave., Weldon 27890, 919-536-4817	NC	11/06/92
Ms. Patricia G. Webb, Wake Medical Center, 3000 New Bern Avenue, Raleigh 27610, 919-250-8138	NC	11/13/92
Ms. Risa Grace, Brian Center Health & Retirement/Windsor, Windsor 27983, 919-794-5146	NC	11/30/92
Mr. William O. Berndt, University of Nebraska Medical Center, Omaha 68198, 402-559-4201	NE	11/30/92
Mr. Samuel Panath, Newark Extended Care Facility, Inc., Newark 07103, 201-483-6800	NJ	11/06/92
Ms. Geraldine Doll, Castle Hill Health Care Ctr., 615 23rd St., Union City 07087, 201-348-0818	NJ	11/24/92
Ms. Bernardina O. Samin, St. Bernadine Health Care, Inc., Jersey City 07304, 201-332-1522	NJ	11/24/92
Mr. Berel Tennenbaum, Perth Amboy Nursing Home, 303 Elm Street, Perth Amboy 08861, 908-442-9540	NJ	11/24/92
Ms. Geraldine Doll, Waterview Healthcare, 536 Ridge Road, Cedar Grove 07009, 201-239-9300	NJ	11/30/92
Mr. John Schaper, NYE Reg'l Med. Ctr., P.O. Box 391, Tonopah 89049, 702-482-6233	NV	11/13/92
Mr. Thomas Green, Community Hospital at Dobbs Ferry, Dobbs Ferry 10522, 914-693-0700	NY	11/03/92
Mr. Peter T. Gendron, Briar Crest Nursing Home, 31 Overton Road, Ossining 10562, 914-941-4047	NY	11/24/92
Sr. Mary Blandine, Saint Francis Hospital, Inc., Tulsa 74136, 918-494-2200	OK	11/24/92
Mr. David A. Wiley, Scenic Mountain Med. Ctr., 1601 West 11th Place, Big Spring 79720, 915-263-1211	TX	11/06/92
Mr. David Parmer, Baptist Hospital of SE Texas, College & 11th Street, Beaumont 77704, 409-835-3187	TX	11/06/92
Mr. B.M. Durr, Uvalde Memorial Hospital, 1025 Garner Field Rd., Uvalde 78801, 512-278-6251	TX	11/10/92
Mr. Nedro G. Parker, Health Network Int'l, Inc., 4506 La Branch, Houston 77004, 713-522-2443	TX	11/24/92
Mr. Bill Haire, Presbyterian Hosp. of Dallas, 8200 Walnut Hill Lane, Dallas 75231, 214-696-7458	TX	11/24/92
Mr. Terry Lee Blackstone, First HomeCare—Houston, Inc., 3336 Richmond, Suite 225, Houston 77027, 713-524-9777	TX	11/24/92
Ms. Laurel L. Wilkening, U. of Washington Harborview Medical Ctr., Seattle 98104, 206-685-3247	WA	11/13/92
Mr. William Lange, Sacred Heart Rehab. Hospital, 1545 South Layton Blvd., Milwaukee 53215, 414-383-4490	WI	11/24/92

Total Attestations 48

[FR Doc. 92-29828 Filed 12-8-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for the Planning, Organization, and Implementation of a Conference on International Public-Service Design

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified organization or individual to assist the Endowment's Design Arts Program in the planning, organization, and implementation of a conference on international public-service design. Duties shall include: Development of a detailed work plan; promotion; registration; logistics; travel arrangements; convening a three (3) day conference for approximately 100-125 invited participants and 20 invited speakers; and providing documentation. Those interested in receiving the Solicitation package should reference Program Solicitation PS 93-04 in their written request and include two (2) self-addressed mailing labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 93-04 is scheduled for release approximately December 15, 1992 with proposals due on January 29, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Anna Mott or William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202 682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92-29783 Filed 12-8-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 14, 1992, through November 27, 1992. The last biweekly notice was published on November 25, 1992 (57 FR 55576).

Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final

determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

January 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the

Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 23, 1992

Description of amendment request: The proposed amendment would change the scram insertion times to reflect the use of the advanced GE-10 fuel design in fuel cycle 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because derivation of the proposed MCPR Safety Limit uses an NRC-approved methodology and the same criteria presented in the current Technical Specification (TS). Equivalent fuel cladding protection (99.9 percent of all fuel rods do not experience transition boiling following a design basis transient) is provided.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because the utilization of current General Electric fuel designs provides an equivalent margin of safety. As stated previously, equivalent fuel cladding protection is provided and ensures 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 15, 1992

Description of amendment request: The proposed amendment would modify the Standby Liquid Control System (SLCS) storage tank temperature and level requirements in the Technical Specifications. The proposed changes permit a wider operating range by varying the concentration of sodium pentaborate decahydrate from 14 to 16.5 weight percent inside the SLCS storage tank. This maintains the Anticipated Transient Without Scram (ATWS) standards requiring a minimum concentration of 14 percent. At concentrations greater than 15.4 percent, the temperature of the solution (including that in the tank and in the pump suction piping) will be maintained at least 10 degrees Fahrenheit above the solution saturation temperature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes to the current technical specifications add requirements for the Standby Liquid Control System (SLCS). The changes are necessary to assure that adequate storage tank level and temperature are maintained to prevent pump cavitation during dual pump operation. The additional requirements do not alter the current sodium pentaborate concentration requirements or temperatures; therefore there is not a significant increase in the probability or consequences of an accident.

Create the possibility of a new or different kind of accident from any previously evaluated because:

The added requirement of maintaining minimum volumes based on solution temperature assures that the SLCS pumps will not cavitate during two pump injection. The additional requirements represent additional restrictions on the operation of the SLCS and do not create a new or different kind of accident.

Involve a significant reduction in the margin of safety because:

Adopting the added restrictions for the SLCS will provide additional assurance that the SLCS will perform as designed. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 27, 1992

Description of amendment request: The proposed Technical Specification (TS) revision changes Table 3.3-10, Accident Monitoring Instrumentation, Item 17, Steam Relief Valve Exhaust Radiation Monitor, Minimum Channels Operable, from "1" to "1/Steam Line."

This proposed change to the TSs will make the requirement in the TS consistent with Catawba's Regulatory Guide 1.97 commitment. The intent of the change is to have the Main Steam Line Monitors operable at all times, or to comply with the ACTION statement. The current TS only requires entry into the ACTION statement if all four Main Steam Line Monitors are inoperable. The proposed TS is more conservative because entry into the ACTION statement is made with one monitor inoperable, ensuring entry into the TS ACTION statement which provides alternative monitoring within 72 hours. This TS change will ensure that an adequate means of estimating offsite dose is available in the event of a steam generator tube rupture.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change does not increase the probability or consequences of an accident previously evaluated. The Main

Steam Line Monitoring do not play a role in the initiation of an accident. The purpose of these monitors is to provide offsite dose assessment in the event of [an] SGTR [steam generator tube rupture]. This proposed TS amendment will more conservatively ensure that the Main Steam Line Monitors are operable than the current TSs. Procedures have also been developed and implemented to ensure that in the event that a monitor is inoperable, a backup method for dose assessment is available.

As stated above, the Main Steam Line Monitors do not play a role in accident initiation, therefore, this proposed TS amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed amendment will more conservatively ensure that the monitors will be available to perform their intended function of dose assessment.

This proposed amendment does not involve any reduction in the margin of safety. These monitors do not play any role in accident initiation, they provide dose assessment. This proposed amendment will more conservatively ensure that a monitor is operable on each Main Steam line than the current TS which only requires one monitor to be operable. Currently all four Main Steam Line monitors would have to be inoperable to enter the action statement. This proposed TS will require entry into the ACTION statement with one monitor inoperable, therefore ensuring that alternate monitoring is provided within 72 hours.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 28, 1992

Description of amendment request: The amendment request proposes to change Section 3.3.2 of the Three Mile Island, Unit 1 (TMI-1) Technical Specifications (TS) to delete an unnecessary requirement to place the unit in a cold shutdown condition in the event that an Emergency Core Cooling (ECC) system cannot be restored to operability status within 72 hours during maintenance. The proposed change would, instead, place the plant in hot shutdown under this circumstance and would be consistent with TS 3.0.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequence of an accident previously evaluated. At least two trains of ECC systems and equipment will continue to be required to be operable when the reactor is critical.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The requirement to place the plant in HOT SHUTDOWN is consistent with the actions required due to inoperability of any ECC system, independent of the initiating circumstances.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety since the change contained in the proposed amendment does not change any existing safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 29, 1992

Description of amendment request: The amendment request proposes to relocate the Loss of Coolant Accident (LOCA) Limited Maximum Allowable Linear Heat Rate limits (Figure 3.5-2M) from the Three Mile Island, Unit 1 (TMI-1) Technical Specifications (TS) to the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposedamendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment relocates the LOCA Limited Maximum Allowable Linear Heat Rate limits to the TMI-1 Core Operating Limits Report in accordance with the intent of NRC Generic Letter 88-16. The proposed amendment provides continued control of the values of these limits and assures these values remain consistent with all applicable limits of the safety analysis addressed in the TMI-1 [Final Safety Analysis Report] FSAR. The Technical Specifications retain the requirement to maintain the plant within the appropriate bounds of these limits. Therefore, the proposed amendment has no effect on the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment relocates the LOCA Limited Maximum Allowable Linear Heat Rate limits to the TMI-1 Core Operating Limits Report. The Technical Specifications retain the requirement to maintain the plant within the appropriate bounds of these limits. Therefore, the proposed amendment has no effect on the possibility of creating a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment provides for continued control of the values of these limits and assures these values remain consistent with all applicable limits of the safety analysis addressed in the TMI-1 FSAR. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: August 17, 1992

Description of amendment request: The proposed amendment would implement the guidance of NRC Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Material and its Impact on Plant Operations", to enhance safe operation of the Seabrook Station by adopting the revised methodology of Regulatory Guide 1.99, Revision 2, to calculate heatup and cooldown curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specification 3/4.4.9 Pressure/Temperature Limits imposes a more restrictive condition on the time of applicability of the pressure/temperature operating limits curves. This revision is the result of a more conservative calculation of the affects of radiation embrittlement of reactor vessels and its impact on plant operations using the current calculational methodology delineated in NRC Regulatory Guide 1.99 Revision 2. Since the plant response to an accident will not change there is no change in the potential for a release of radiation to the public. As there is no change in the potential for an increase in the release of radiation to the public it follows that the consequences of an accident, measured in terms of dose, will not increase due to the proposed conservative revisions to the heatup and cooldown curves.

The proposed revisions to the heatup and cooldown curves do not change the function or operation of any plant equipment or effect the response of that equipment if it is called upon to operate. Since the plant will continue to function as designed there will be no significant increase in the probability of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from one previously evaluated.

The proposed revisions to the heatup and cooldown curves do not change plant design or function, effect the operation of any plant equipment or introduce any new failure mechanisms. The proposed changes to Technical Specification 3/4.4.9 provide a more conservative estimate of radiation embrittlement of the reactor vessel and reduces the time of applicability of the pressure/temperature operating limits curve. The previous accident analyses are unchanged and bound all expected plant transients and there are no new or different accident scenarios created. Therefore, the proposed revisions do not create the possibility of a new or different kind of accident from one previously evaluated.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The Bases of Technical Specification 3/4.4.9, Pressure/Temperature Limits is to assure that the Reactor Coolant System is designed and operated in a manner such that a non-ductile condition is not reached and that the Reactor Coolant System is conservatively operated in accordance with applicable Code requirements. The proposed revision is consistent with the methodology described in Revision 2 to Regulatory Guide 1.99 and does not significantly reduce the margin of safety defined in the Bases. The proposed revisions provide increased conservatism regarding radiation embrittlement of reactor vessels and its impact on plant operations.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: September 11, 1992

Description of amendments requests: The proposed amendments would incorporate a reference to the revised methodologies described in WCAP-10924-P into the Prairie Island Technical Specifications (TS) so the model revisions can be used in the determination of the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative change to Technical Specification Section 6.7.A.6.b incorporates a reference to a revised core analysis methodology reviewed and approved by the NRC Staff. Because the proposed change is administrative in nature and because the revised methodology referenced in the change will have prior NRC review and approval, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above, the proposed change does not contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed changes. The cycle-specific core operating limits will be calculated using the revised NRC-approved methods and submitted to the NRC. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety is not affected by the addition of a reference to an NRC approved core analysis methodology to the Technical Specifications. The margin of safety provided by the current Technical Specifications remains unchanged. The Technical Specifications continue to require operation within the core limits obtained from NRC-approved reload design methodologies. The actions to be taken when or if limits are violated remain unchanged.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the plant in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 30, 1992 (Reference LAR 92-07)

Description of amendment requests: The proposed amendments would

revise the combined Technical Specifications (TS) 3.8.1, "AC Sources," for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to allow for a one-time extension of the 7-day allowed outage time (AOT) for Emergency Diesel Generator (EDG) 1-3. This one-time extension allowing EDG 1-3 to be inoperable for up to 14 days, would be used to: (1) complete modifications and associated testing to separate EDG 1-3 from Unit 2 to support installation of the new sixth EDG 2-3, (2) implement Appendix R modifications, and (3) perform preplanned maintenance/testing during the Unit 2 fifth refueling outage. During this AOT, Unit 2 would be either in Mode 5, Mode 6, or in a defueled configuration, and the remaining four EDGs would be operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Because of the number of offsite circuits to DCPP and lack of severe weather conditions, DCPP's offsite power system is highly reliable. The DCPP EDG reliability history indicates that [their] reliability is higher than the industry average. In fact, the Units 1 and 2 dedicated EDGs that will be operable while maintenance is being performed on EDG 1-3 have been proven [to be] highly reliable.

The PRA for the increased AOT results determined that the probability of an accident previously evaluated does not significantly change by increasing the EDG AOT from 7 to 14 days.

Increasing the EDG 1-3 AOT does not involve physical alteration of any plant equipment and does not effect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be effected by the increased AOT.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the allowed outage period for EDG 1-3 maintenance and acceptance testing does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for DCPP.

c. Does the change involve a significant reduction in a margin of safety?

The increased outage time will result in Unit 1 operation for up to 14 days with two operable EDGs. The high reliability of the two Unit 1 dedicated EDGs and the compensatory measures regarding plant conditions and power system availability ensure that there is an insignificant affect on the margin of safety.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 5, 1992

Description of amendment request: The licensees propose to modify Trojan Technical Specification 3/4.3.3.7, "Fire Protection Instrumentation." This amendment request would revise the list of fire detection instruments (Table 3.3-10) and surveillance requirements found within the specification to reflect modifications to the fire detection system, which were made to ensure compliance with the National Fire Protection Association Standard on Automatic Fire Detectors (NFPA 72E). This amendment request is the result of a commitment made by the licensees to the Nuclear Regulatory Commission in Licensee Event Report 92-15, dated July 17, 1992. This submittal was designated by the licensees as LCA 226.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 - Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes reflect an upgrade to the Trojan Fire Detection System to bring it into compliance with NFPA [National Fire Protection Association] 72E, "Standard on Automatic Fire Detectors". Fire detectors were added, relocated, and/or replaced with a different type to improve the fire detection capability in a given fire area in accordance with NFPA criteria. The replacement of detectors with thermal detectors in selected areas will not significantly affect the response time for an oil fire.

Therefore, the proposed changes reflect an overall improvement in fire detection capability and do not involve an increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Does the proposed license amendment create thepossibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes in the fire detection specifications do not introduce or produce a new or different type of hazard from what was previously evaluated as part of the fire hazards analysis. The improvements in the fire detection capability consist of the addition of new detectors, replacement of selected smoke detectors with thermal detectors, and relocation of existing detectors. These improvements represent an extension of the existing system which was previously installed for early notification of a fire. The replacement of smoke detectors with thermal detectors in selected areas will not significantly affect the response time for an oil fire.

Therefore, the changes proposed in the license amendment request do not create the possibility of a new or different type of accident from any accident previously evaluated.

Standard 3 - Does the proposed license amendment involve a significant reduction in a margin of safety?

The margin of safety for fire protection is increased by the overall improvements to the fire detection capability. This is because the new and replacement detectors brought the Fire Detection System into compliance with NFPA Codes. Also, some smoke detectors have been replaced with thermal detectors to enhance the detection capability in selected areas where the postulated fire would involve combustible liquids. The replacement of smoke detectors with thermal detectors in these areas will not significantly affect the response time for an oil fire. Accordingly, additional surveillance requirements for thermal detectors are also included.

Therefore, there will not be a significant reduction in a margin of safety as a result of this proposed license amendment.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 25, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications revises Table 3.2-1 "Instrumentation that Initiates Primary Containment Isolation" to reflect a plant modification which installed two additional temperature elements, associated cabling, temperature switches and circuitry in the area of the Reactor Water Cleanup (RWCU) pump suction primary containment penetration.

The licensee's equipment qualification program postulated a high energy line break (HELB) in a nineteen foot section of RWCU pipe that runs between the containment penetration and the RWCU "A" pump room. As a result, two new temperature elements were added to isolate the RWCU system from the reactor vessel in the event of a line break in this area. Six existing temperature elements monitor other RWCU system areas.

Table 3.2-1 of the FitzPatrick Technical Specifications only listed six RWCU area high temperature instrument channels when eight channels were installed in the plant. This proposed change adds these two new channels to correct Table 3.2-1 and to reflect the modification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The total number of high temperature instrumentation channels has been increased from six to eight. The increase in instrument channels will increase the probability of inadvertent or spurious isolations of RWCU. Since this isolation has no adverse safety implications, there are no increases to the probability or consequences of an accident. The new temperature instrumentation channels assure that RWCU will isolate in the event of a postulated break. The new temperature instrumentation is designated Class 1E and seismic Category I and interfaces with existing temperature switches. The change will not alter the requirements of the existing operating procedures or the methodology of the surveillance program. The change reflects instrument and controls that enhance the ability of the RWCU system to isolate in the event of a HELB.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of two sensors to the [Limiting Conditions for Operation] LCO for RWCU system primary containment isolation does not create the possibility of a new or different kind of accident. The two new detectors provide the same kind of protection (i.e., RWCU system containment isolation signal) against the consequences of a HELB accident in the RWCU system as the existing design by monitoring area high temperatures. The new detectors are designated Class 1E and Seismic Category I consistent with the current detection system design. They do not alter the methodology of plant operations or operating procedures.

3. involve a significant reduction in a margin of safety.

The installation of two new steam leak detectors for monitoring the RWCU system will not adversely affect the margin of safety for equipment and personnel. These changes improve the plant's capability to detect and mitigate HELB accidents. They are located near a line break postulated as part of the equipment qualification program. The changes provide a positive margin of safety in the ability to detect a break or leak in the RWCU system in the area of the containment penetration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 25, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications adds operability and surveillance requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas," and 4.12.1, "Water Spray/Sprinkler System Tests," to reflect a plant modification that will improve fire protection at the FitzPatrick plant. The modification installs an automatic fire suppression system in the battery room corridor. The new suppression system is a wet pipe design with fusible link sprinklers that are heat actuated to allow for sectionalized fire suppression capability. The system is automatically initiated when the nearby temperature reaches the melting point of the fusible link.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the Technical Specifications to reflect a plant modification to the Fire Protection System. These changes will increase the ability to suppress fires. The modification to the fire protection system will not adversely affect the ability of plant personnel and fire protection equipment to detect and extinguish a fire. The proposed revision to Tables 3.12.1 and 4.12.1 of the Technical Specifications will provide limiting conditions of operation and surveillance requirements for the modification consistent with the limiting conditions of operation and surveillance requirements of other similar fire protection systems. These changes to the Technical Specifications assure that the new system is operable by periodic surveillance and that required actions are taken if it is not available.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification does not create the possibility of a new or different kind of accident. The modification to the fire protection system provides additional protection against the possibility of fire in the battery room corridor. The proposed changes to the Technical Specifications do not alter plant operations or operating procedures. The provision of a wet pipe sprinkler system can result in water sprays but the shutdown requirements due to previously analyzed fire effects bound the effects of water spray. The effects of inadvertent actuation have been evaluated and do not initiate a different kind of accident. Although it may cause the loss of certain equipment, it is less limiting than other analyzed events including a fire in this area.

3. involve a significant reduction in a margin of safety.

The proposed revision to the Technical Specifications to reflect the installation of a fire suppression system in the battery room corridor will not adversely affect the margin of safety for equipment and personnel in that area. These changes improve the plant's capability to suppress fires and limit fire

damage. The potential for flooding or water damage has been evaluated and is bounded by fire effects. This change, therefore, results in a net improvement in plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 28, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications would revise the flow requirement for the Core Spray (CS) pumps and the associated Bases. The change reduces the CS pump minimum flow acceptance criteria by 10% and addresses an inconsistency between the system leakage rates in the Updated Final Safety Analysis Report (UFSAR) and the Technical Specifications. Specifically, the surveillance testing required by the Technical Specifications is intended to verify the capability of the core spray pump to deliver acceptable flow to the core. The surveillance test should also account for system leakage that is not delivered to the core. The licensee concludes that the proposed reduction in core spray pump flow rate will not affect plant safety because the CS system can perform its required functions at the reduced flow while accounting for system leakage. The licensee has performed analyses which indicate that the reduction in CS pump minimum flow will not cause the FitzPatrick fuel peak clad temperature (PCT) to exceed the acceptance criteria specified in 10 CFR 50.46 or require the use of a different evaluation methodology than that specified in 10 CFR Part 50, Appendix K.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The CS system is designed to mitigate the consequences of analyzed accidents and is normally in the standby mode. The proposed changes reduce flowrate which is a reduction in the performance condition required to respond to an accident. This does not effect the manner in which the CS system is tested or its function. Therefore, the changes have no effect on the conditions which could initiate an accident.

The effect of a 10% reduction in the CS pump flow rate has been analyzed using approved methodology. The PCT increase of 88°F has no significant effect on the existing margin to the 2200°F acceptance criteria. Slight increases in metal water reaction occur. These are not of safety significance because the prior LOCA [Loss of Coolant Accident] analyses used a higher PCT and the UFSAR evaluations are based upon metal water reactions due to more severe conditions. There are no changes to the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR). The change, therefore, does not effect continued compliance with 10 CFR 50.46.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The decrease in flowrate for the CS pump is a decrease in the performance requirement for the system. Conditions that could lead to an accident are not changed. There are no changes to the manner in which tests are conducted, no changes to system design and no changes to operating procedures that could result in a new or different kind of accident.

3. involve a significant reduction in a margin of safety.

The effect of a 10% reduction in the CS pump flow rate has been analyzed using approved methods. Margin of safety is provided by the conservatisms required in Appendix K and by a conservative application of the approved GESTR-LOCA and SAFER Models in NEDE-23785. These margins are not effected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: April 23, 1992

Description of amendment request: The proposed amendment would change Technical Specifications (TS) by redefining the snubber visual inspection schedule pursuant to guidance contained in Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Action," dated December 11, 1990. Technical Specification sections 3.13 and 4.14 including the bases are to be updated to address the provisions of GL 90-09. In addition, RG&E intends to increase the snubber visual inspection intervals pursuant to the guidance contained in GL 91-04, "Changes in Technical Specifications Surveillance Intervals to Accommodate a 24-month Fuel Cycle," dated April 2, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Excerpts of the licensee's analysis are presented below:

There is no significant increase in the probability or consequences of an accident previously evaluated because accident conditions and assumptions are not affected by the proposed Technical Specification change. The effect on the availability of the snubbers due to an increase in the visual inspection interval has been shown to be negligible. Further, functional testing alone assures, ... snubbers are operable without any visual inspection, as assured by Technical Specification 4.14.1c (changed to 4.14.1d per the proposed amendment). This will ensure that system reliability remains essentially unchanged. Furthermore, the proposed change will reduce future occupational radiation exposure.

The possibility of a new of different kind of accident from any accident previously evaluated is not created. In matters related to nuclear safety, all accidents are bounded by previous analysis. The proposed change does not add to or modify any equipment or system design nor does it involve any changes in the operation of any plant system. The absence of a hardware change means that the accident initiators remain unaffected, so no unique accident probability is created.

The proposed amendment does not involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification because the proposed amendment will continue to ensure ... snubbers are operable. Equipment reliability will be maintained and no Limiting Condition for Operation (LCO) or Limiting Safety System Setpoint (LSSS) would be affected. Thus, the reduction in margin of safety is considered to be insignificant.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Walter R. Butler

Rochester Gas & Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 8, 1992

Description of amendment request: The proposed amendment would change the Ginna Technical Specifications to incorporate additional specifications and Action Statements regarding the operability and surveillance requirements of the onsite power sources available for safetyrelated plant instrumentation. This upgrade is in response to the guidance provided in Generic Letter (GL) 91-11, "Resolution of Generic Issues 48, "LCOs for Class 1E Vital Instrument Buses," and 49, "Interlocks and LCOs for Class 1E Tie Breakers" Pursuant to 10 CFR 50.54(f)," for the resolution of Generic Issue 48. The proposed changes are modeled after the Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Excerpts of the licensee's analysis are presented below:

Requirements for safety-related instrument bus operability have been added based on reactor coolant system operation above and below cold shutdown. Previously no instrument bus operability requirements, required actions, nor surveillance requirements were specified in the Technical Specifications. Consequently, this amendment is considered an enhancement to the Technical Specifications. The changes in this amendment are based on the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452), with deviations to address specific design features at the Ginna Station.

In accordance with 10 CFR 50.91, these changes to Technical Specifications have been evaluated to determine if the operations of the facility in accordance with the proposed amendment would:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident previously evaluated· or

3. Involve a significant reduction in a margin of safety.

These proposed changes do not increase the probability or consequences of a previously evaluated accident or create a new or different kind of accident. Further, there is no unacceptable reduction in the margin of safety for any Technical Specification.

This change constitutes additional limitations, restrictions, and controls not presently included in the technical specification, and is considered an example (I.B.2.e(ii)) of an amendment that is not likely to involve significant hazards considerations as described in Part 91 "Statements of Consideration" published in 51 FR 7745 (March 6, 1986).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards considerations.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Electric Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 6, 1992

Description of amendment request: The proposed Technical Specification (TS) changes would permit an increase in the maximum permissible average level of steam generator tube plugging (SGTP) from 15% to 18%. Although no value for SGTP is specified in the TS, the increase in SGTP would result in a 1.7% decrease in the minimum measured flow (MMF) value which is referenced in TS 3/4.2.3. The proposed reduction in MMF will require changes to Table 2.2-1; specifically, the overtemperature delta T values for total allowance and the statistical summation of errors (Z) would be changed from 9.8 and 7.21 to 10.3 and 7.8, respectively. With respect to Note 1 of Table 2.2-1, the value for the K1 term and the positive wing of the f(delta I) penalty, are also affected by the proposed reduction in flow. The value for the K1 term in the overtemperature delta T setpoint equation is reduced from 1.203 to 1.195 and the slope of the positive wing of subsection iii of Note 1 is increased from 2.13% to 2.34%. The nominal value of loop design flow in the footnote to Table 2.2-1 Functional Unit 12 is revised to reflect the change in MMF. These changes will permit the TS to allow plant operation with a reduced MMF of 284,600 gallons per minute.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of [Virgil C. Summer Nuclear Station] VCSNS in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the [reactor coolant system] RCS flowrates [minimum measured flow and thermal design flow] (MMF and TDF) are not reduced to a value below that assumed in or evaluated against the licensing bases of the plant and the proposed modification involves only minor changes to primary side operating parameters and the heat transfer capabilities of the steam generators, an increase in the maximum average SGTP level from 15% to 18% (including 20% peak) will not result in any additional challenges to plant equipment. The assessment of the [Nuclear Steam Supply System] NSSS primary components, including the reactor pressure vessel system, reactor coolant pump [RCP], steam generator, pressurizer, Control Rod Drive Mechanisms, and RCP piping, concluded that the integrity of the components will be unaffected by the increase in average SGTP level. Also, evaluations of the Reactor Coolant System, Chemical and Volume Control System, Residual Heat Removal System, and Safety Injection System concluded that the increase in SGTP will not adversely impact the adequacy of the systems. In addition, SGTP does not adversely impact steam generator tube integrity.

With respect to the accident analyses, all of the applicable [loss-of-coolant accident] LOCA, non-LOCA, and [steam generator tube rupture] SGTR design basis acceptance criteria remain valid for the transients evaluated. The [departure from nucleate boiling ratio] DNBR and [peak cladding temperature] PCT values remain within the specified limits of the licensing basis, and the current mass and energy release data used for containment integrity and equipment qualification remain bounding. Finally, no new limiting single failure is introduced by the proposed change.

Since the design requirements and safety limits continue to be met, system functions are not adversely impacted, and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Thus, the probability of occurrence and the radiological consequences of the accidents previously evaluated in the VCSNS [Final Safety Analysis Report] FSAR remain unchanged.

2) The proposed license amendment does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

The increase in the maximum average level of SGTP from 15% to 18% (20% peak) and subsequent reduction in MMF will not introduce any new accident initiator mechanisms. No new failure modes or limiting single failures have been identified. Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, an accident which is different from any already evaluated in the FSAR will not be created as a result of this change.

3) The proposed license amendment does not involve a significant reduction in a margin of safety.

As discussed in the evaluation above although the proposed increase in the average SGTP level to 18% (20% peak) will require a change to the plant Technical Specifications, it will not invalidate the LOCA, non-LOCA, or [steam generator] SG Tube Rupture conclusions presented in the FSAR accident analyses. For all the FSAR non-LOCA transients, the [departure from nucleate boiling] DNB design basis, primary and secondary pressure limits, and dose limits continue to be met. The LOCA peak cladding temperatures remain below the limits specified in 10CFR50.46. The calculated doses resulting from a SG Tube Rupture event will not change and continue to remain within a small fraction of the 10 CFR [Part] 100 permissible releases. The current mass and energy release data used for containment integrity and environmental qualification will remain applicable. The margin of safety with respect to the primary pressure boundary is provided, in part, by the safety factors included in the [American Society of Mechanical Engineers] ASME Code. The components evaluated remain in compliance with the codes and standards in effect when VCSNS was originally licensed. Thus, there is no reduction in the margin of safety as defined in the bases of the VCSNS Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 2, 1992 (TS 92-11)

Description of amendment request: The proposed amendment would revise the Refueling Operations Reactor Vessel Water Level Applicability Statement of Technical Specification Limiting Condition for Operation 3.9.10. The proposed change would incorporate an exception to the refueling water level requirement of maintaining at least 23 feet of water over the top of the reactor pressure vessel flange, such that the requirement would not be applicable when the control rods are being latched and unlatched during the refueling operations. In addition, a statement would be added to specify that the 23 foot minimum water level requirement is applicable when moving irradiated fuel assemblies within the containment and a statement that indicates that the provisions of TS 3.0.3 are not applicable would be removed. A corresponding surveillance requirement would specify that the surveillance test would be performed for core alterations and movement of irradiated fuel within the containment, but not for movement of control rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c), which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This TS change continues to require at least 23 feet of refueling water above the reactor pressure vessel flange for core alteration and movement of irradiated fuel assemblies as required by the existing TS 3.9.10, and does not affect the probability or consequences of an accident. The 23-foot water- level requirement is based on iodine removal for the postulated fuel-handling accident involving dropping and rupture of an irradiated fuel assembly that the latching and unlatching activities could not create. Additionally, because the upper internals are in place during latching and unlatching activities, the full withdrawal of control rods or movement of fuel assemblies cannot be performed, and the conditions postulated to result in a fuel-handling accident are not possible. Therefore, this exception for refueling water level during control rod latching and unlatching does not increase the probability of an accident and in fact, the plant conditions required for this activity do not result in configurations that are necessary to create the postulated accident. The consequences of an accident are not increased because the 23 feet of water above the reactor pressure vessel flange is still maintained for iodine removal except during control rod latching and unlatching when no postulated accident could occur. All other changes are clarifications, along with the deletion of the TS 3.0.3 exception, that do not affect the intent or operational impact of this specification and therefore will not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The refueling water-level requirements for core alterations and movement of irradiated fuel assemblies, excluding control rod latching and unlatching, are unchanged. These activities have been previously analyzed for a fuel-handling accident. The exception to the refueling water-level requirement for control rod latching and unlatching does not alter the physical manipulations for refueling activities involving core alterations or fuel movement and does not create any conditions that could create an accident. The refueling water-level requirements are provided for mitigation of accidents and do not have an effect on accident generation; therefore, an exception that allows refueling water level below 23 feet will not create the potential for an accident. This change, along with the clarifications and TS 3.0.3 exception deletion, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

All margins assumed in the accident analysis for fuel-handling accidents are maintained in this change because 23 feet of water is still required for the removal of iodine activity during core alterations and movement of irradiated fuel assemblies. The exception to this water-level requirement is only allowed during control rod latching and unlatching when the potential for a fuel-handling accident does not exist. Therefore, this change will not reduce the margin of safety and the margin to 10 CFR 100 dose limits is not affected.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 16, 1992 (TS 92-13)

Description of amendment request: The proposed changes would: (1) reduce the required reactor coolant system total flow rate specified in Technical Specification 3.2.5, Table 3.2-1, from greater than or equal to 378,400 gpm to greater than or equal to 375,000 gpm; (2) modify the footnote associated with this flow rate in Table 3.2-1 to reflect a 2.4 percent flow measurement uncertainty instead of 3.5 percent; (3) correct a typographical error in a footnote for Unit 2 Table 3.2-1 to correct the spelling of "uncertainty≥; and (4) provide consistent wording for the Parameter, "Reactor Coolant System Total Flow Rate" in Table 3.2-1 for both Units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not alter any of the assumptions used in the accident analysis. The reduction in the minimum TS reactor coolant system (RCS) flow rate only eliminates excess measurement uncertainty. Therefore, no change in any accident analysis assumptions or any plant configuration is involved in the proposed TS change. Based on this, no increase in the probability or consequences of an accident can result from this TS change because RCS design flow rates remain unchanged, ensuring no change in the plant response for normal or accident conditions.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No plant design parameters, equipment, or operating conditions are altered by the proposed TS change and therefore, no possibility of a new or different kind of accident is created. This elimination of the excess RCS flow measurement uncertainty margin will permit plant operation below the existing RCS flow rate requirement, but not below the measured valve that ensures operation at greater than or equal to the design flow assumed in the accident analysis.

3. Involve a significant reduction in a margin of safety.

The proposed TS change only affects the excess RCS flow measurement uncertainty above the required design flow. This reduction does not affect the "margin of safety" because the RCS design flow remains unchanged and thereby maintains the margin between design operating conditions and the RCS flow rate required to maintain the accident analysis assumptions. Therefore, the proposed reduction in minimum RCS flow to account for the excess measurement uncertainty does not involve a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: September 29, 1992, as supplemented November 6, 1992

Description of amendment request: The proposed amendment to Technical Specification (TS) Surveillance Requirement 4.7.A.3.a.2 would provide an alternative to the currently required increase in Appendix J, Type A test frequency incurred after the failure of two successive ILRTs. This change would only apply to the current condition of two consecutive Type A test failures (cycle 11 and cycle 13 refueling outages) vice a permanent change to the TS Surveillance Requirements.

Date of publication of individual notice in **Federal Register:** November 23, 1992 (57 FR 55009)

Expiration date of individual notice: December 28, 1992

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 9, 1992 (TS 92-15)

Brief description of amendments: The amendments provide an alternate method for satisfying the response time requirements of the engineered safety features actuation system (ESFAS) for the feedwater instrumentation channels when the feedwater line is isolated.Date of publication of individual notice in **Federal Register:** November 20, 1992 (57 FR 54865)

Expiration date of individual notice: December 21, 1992

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these

amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 7, 1991 and supplemented October 26, 1992.

Brief description of amendment: Pilgrim Nuclear Power Station's (PNPS) Technical Specifications by relocating parts of section 3/4.12, "Fire Protection," into Pilgrim's Final Safety Analysis Report (FSAR) and by making related changes to other Technical Specification sections in support of the relocation. These proposed changes were developed in accordance with the guidance contained in NRC Generic Letters (GL) 86-10 and 88-12 and are consistent with NRC and industry efforts to simplify Technical Specifications. The associated change to the FSAR was made in the 1991 update as part of Revision 13. These changes also make a minor administrative correction unrelated to Fire Protection.

Date of issuance: November 16, 1992

Effective date: November 16, 1992

Amendment No.: 143

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57691) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 NorthStreet, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: July 26, 1991

Brief description of amendment: The amendment would restore the nonapplicability of Specification 3.0.4 to Specification 3/4.6.3 in accordance with the guidance provided in Generic Letter 91-08 by adding a statement to the limiting condition for operation (LCO) under action requirements to state "The provisions of Specification 3.0.4 are not applicable." This exception would apply to all containment isolation valves.

Date of issuance: November 17, 1992

Effective date: November 17, 1992

Amendment No. 34

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43804) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: September 2, 1992

Brief description of amendment: The amendment will (1) incorporate, by reference, the new Siemens Nuclear Power's (SNP) methodologies previously approved by the NRC staff, (2) increase the resultant Safety Limit Minimum Critical Power Ratio (SLMCPR) in the Technical Specifications, and (3) remove specifications referring to the SLMCPR for GE fuel.

Date of issuance: November 23, 1992

Effective date: Prior to startup from the next refueling outage (Cycle 14)

Amendment No.: 121

Facility Operating License No. DPR-19. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45079) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 20, 1992

Brief description of amendments: Revision of Technical Specifications to delete the isolation function and surveillance requirements for the control room ventilation system chlorine and sulfur dioxide analyses.

Date of issuance: November 12, 1992

Effective date: November 12, 1992

Amendment Nos.: 140 and 135

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37562) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 12, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 12, 1992.

Brief description of amendment: The amendment deletes the qualifying phrase ". . . after the reactor has been made critical." from TS 3.7.2.

Date of issuance: November 10, 1992

Effective date: November 10, 1992

Amendment No.: 153

Facility Operating License No. DPR-20. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37564) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 24, 1992.

Brief Description of amendment request: The amendments revise Appendix A Technical Specification Surveillance Requirement (SR) 4.7.12 for both units. The revision would replace the existing requirements for snubber visual inspection schedules and other requirements with the alternate surveillance requirements endorsed by the Commission's Generic Letter 90-09 issued December 11, 1990, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions." Additionally for Unit 2 only, the functional test acceptance criteria will be revised to be identical to those criteria for Unit 1. Certain other administrative changes are made to maintain document consistency.

Date of issuance: November 20, 1992

Effective date: November 20, 1992

Amendment No.: 167 - Unit 1 - 49 - Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992, The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 2, 1992

Brief description of amendment: The amendment revised the Technical Specifications by changing the Plant Operating Review Committee (PORC) composition to reflect a reorganization change. The Plant Engineering Superintendent position has been eliminated and Waterford 3 will substitute one of the managers from the plant engineering groups as a member.

Date of issuance: November 16, 1992

Effective date: November 16, 1992

Amendment No.: 79

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47130) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

General Electric Company, Docket No. 50-18, Vallecitos Boiling Water Reactor, Alameda County, California.

Date of application for amendment: Amendment No. 20, November 29, 1989.

Brief description of amendment: This amendment changes the timing requirement for the submittal of the annual report after completion of the annual survey from 60 days to 180 days.Facility License No. DPR-1: Amendment revises the timing requirement for submittal of the annual report.

Local Public Document Room location: 2120 L Street, N.W., Washington, DC 20555.

Attorney for licensee: Harry C. Burgess, Esq., General Electric Company, 175 Curtner Avenue, San Jose, California 95125-1088.

NRC Project Manager: Clayton L. Pittiglio, Jr.

NRC Division Director: Richard L. Bangart

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: December 3, 1991

Brief description of amendment: The amendment revises the Technical Specifications sections addressing the Heat Balance Calibration definition and the action statement in the event that one of the redundant narrow range containment water level instrument should become inoperable. The Heat Balance Calibration definition change updates the TMI-1 Technical Specifications to the equivalent of the Standard Babcock & Wilcox Technical Specifications definition. The containment water level monitoring instrument action statement is revised to recognize that each channel contains both a narrow and wide range transmitter, allowing the revised action statements to address the failure of a single instrument.

Date of issuance: November 24, 1992

Date of issuance: November 24, 1992

Effective date: November 24, 1992

Amendment No.: 166

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24670) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: July 1, 1991

Description of amendment request: The amendment revised Technical Specification 3/4.3.2, "Containment and Reactor Vessel Isolation Control Systems," to accommodate TS Surveillance intervals of 18 months.

Date of issuance: October 16, 1992

Effective date: October 16, 1992

Amendment No.: 66

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37584) the Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: April 22, 1992, supplemented on April 23, 1992

Brief description of amendment: The amendment revised the Technical Specifications by incorporating reactor water cleanup system leak detection instrumentation requirements.

Date of issuance: November 12, 1992

Effective date: November 12, 1992

Amendment No.: 188

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24673) The Commission's related evaluation of the amendment is contained in a Safety

Evaluation dated November 12, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: May 28, 1992

Brief description of amendment: The amendment revised the Technical Specifications by modifying the diesel generator surveillance requirements to reduce testing of the operable diesel generator when the other diesel generator is inoperable.

Date of issuance: November 12, 1992

Effective date: November 12, 1992

Amendment No.: 189

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32574) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50-331, Duane ArnoldEnergy, Center, Linn County, Iowa

Date of application for amendment: December 13, 1990

Brief description of amendment: The amendment revised license condition 2.C.(3) by replacing it with the standard fire protection condition. The amendment also revised the Technical Specifications by: (1) removing requirements for fire protection systems, (2) removing fire brigade staffing requirements, and (3) adding administrative controls that are consistent with those for other programs implemented by license condition.

Date of issuance: November 23, 1992

Effective date: November 23, 1992

Amendment No.: 190

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (56 FR 33958) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: September 17, 1992

Brief description of amendment: The amendment revises Technical Specification Tables 3.3.7.2-1 and 4.3.7.2-1 to reflect the relocation of a triaxial peak accelerograph seismic monitor from a reactor recirculation pump motor to the reactor pedestal. The location change was necessary to avoid high background vibration at the original monitor location which could mask readings during actual seismic events.

Date of issuance: November 20, 1992

Effective date: November 20, 1992

Amendment No.: 39

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47140) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 17, 1992, as supplemented October 30, 1992.

Brief description of amendment: The amendment revises the Technical Specifications (TS) 4.6.1.6.1 to 4.6.1.6.4 related to the prestressed concrete containment surveillance.

Date of issuance: November 16, 1992

Effective date: November 16, 1992

Amendment No.: 165

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40217) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: August 14, 1992

Brief description of amendment: This amendment revises the Technical Specifications (TS) for the operation of the vital instrument bus inverters at Salem, Unit 1 to make them identical to the TS currently in place for Salem, Unit 2.

Date of issuance: November 20, 1992

Effective date: November 20, 1992

Amendment No. 137

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45086) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: January 10, 1992, as supplemented September 24, 1992.

Brief description of amendments: These license amendments revise Browns Ferry Nuclear Plant Technical Specifications by removing detailed listings of containment penetrations and isolation valves and placing them in controlled plant procedures, in accordance with guidance provided by Generic Letter 91-08.

Date of issuance: November 16, 1992

Effective date: November 16, 1992

Amendment Nos.: 189 - Unit 1: 204 - Unit 2: 161 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68:

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4495) The September 24, 1992 letter mentioned above incorporated certain additional technical specifications changes in accordance with Generic Letter 91-08 that had been inadvertently omitted by the January 10, 1992 application. These additional changes

were within the scope of the initial determination of no significant hazards determination, thus no re-notice was necessary. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1992.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Toledo Edison Company, Centerior Service Company, and The ClevelandElectric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 1, 1991

Brief description of amendment: The amendment revised Technical Specification 6.2.2, Facility Staff, by adding a footnote to Table 6.2-1, Minimum Shift Crew Composition. The footnote would allow one of the two required individuals filling the Senior Operator License position to assume the Shift Technical Advisor function, provided the individual meets the qualifications for the combined Senior Reactor Operator/Shift Technical Advisor position.

Date of issuance: November 23, 1992

Effective date: November 23, 1992

Amendment No. 175

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22270) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 7, 1990, supplemented May 10, 1991 and September 11, 1992.

Brief description of amendments: The amendments revised Technical Specification 5.3.7, "Auxiliary Electrical Systems," to incorporate reference to a fifth station battery. The amendment also revised Technical Specification 15.4.6, "Emergency Power System Periodic Tests," by changing testing requirements for safety-related station batteries. The fifth battery is being installed now and will be in service by the end of 1992. This amendment becomes effective when the installation of the fifth battery is complete but no later than December 31, 1992.

Date of issuance: November 23, 1992

Effective date: November 23, 1992

Amendment Nos.: 136 and 140

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29283) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 23, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Notice Of Issuance Of Amendment To Facility Operating License and Final Determination of No Significant Hazards Considerations and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and

at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: November 2, 1992

Brief description of amendment: The amendment temporarily relieves the 2G33-F040 reactor water cleanup return line containment isolation valve from the requirement to have a valid Type C test. The relief would last until the next refueling outage or the next outage of sufficient duration to test the valve, whichever is sooner.

Date of issuance: November 20, 1992

Effective date: November 20, 1992

Amendment No.: 72

Facility Operating License No. NPF-18. The amendment revised the Technical Specifications.Public comments requested as to no significant hazards consideration: NoThe Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 20, 1992.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 2nd day of December 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation.

[FR Doc. 92-29720 Filed 12-8-92; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 030-04325; License No. 13-00155-10; EA 92-198]

Amoco Oil Co., Whiting, IN; Confirmatory Order Modifying License

I

Amoco Oil Company (Amoco or Licensee) is the holder of Byproduct Material License No. 13-00155-10 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. The license authorizes the use of byproduct material (iridium-192 and cobalt-60) for industrial radiography in devices approved by the NRC or an Agreement State. Licensed materials are authorized for use and storage at the Licensee's facility at 2815 Indianapolis Boulevard, Whiting, Indiana. The use of licensed material is also authorized at temporary job sites anywhere in the United States that the NRC has jurisdiction to regulate the use of licensed material. The license, originally issued on February 4, 1958, was last renewed on October 2, 1990, and is due to expire on December 31, 1995.

II

During the period from September 15 to October 9, 1992, the NRC conducted an inspection and investigation of Amoco's licensed activities. This inspection and investigation was based, in part, upon an anonymous allegation received by the NRC on August 27, 1992. Although the inspection and investigation activities are continuing, the following significant violations have been identified:

A. Condition 18.A. of License No. 13-00155-10 incorporates, by reference, the requirement that practicing radiographers and radiographer's assistants are to be audited by the Radiation Safety Officer (RSO) or by an Assistant RSO at intervals not to exceed 3 months to meet the requirements of 10 CFR part 34. Contrary to this, Mr. Michael J. Berna, the Licensee's RSO, admitted to the NRC in a sworn, transcribed interview on October 7, 1992, that on at least ten occasions (February 6, 10, 12, and 29, April 11, 22, 24, and 29, May 12, and September 1, 1992), he knowingly failed to conduct required audits and that he deliberately falsified records to make it appear as though he had conducted those audits. These actions constitute violations of 10 CFR 30.9(a) and 10 CFR 30.10(a).

B. Condition 18.A. of License No. 13-00155-10 incorporates, by reference, the requirement that audits of radiographers and radiographer's assistants should be unannounced, insofar as possible. During an NRC interview of the RSO on September 15, 1992, Mr. Michael J. Berna told the NRC inspector that he did not provide advance notice to radiographers or radiographer's assistants of upcoming audits. Contrary to this, many radiographers told the NRC during sworn, transcribed interviews that Mr. Berna routinely gave prior notice of impending audits to radiographers and radiographer's assistants. Mr. Berna's statement to the NRC was false and in violation of 10 CFR 30.9(a) and 10 CFR 30.10(a).

C. Other violations of NRC regulations identified in the inspection which collectively demonstrate a lack of effective oversight of the Licensee's radiation safety program include the following:

1. Since April 1992, an individual was permitted to act as a radiographer who, as of the date of the inspection, had not demonstrated an understanding of the instructions specified in 10 CFR 34.31(a) by completing a field examination on the subjects covered in that section in accordance with 10 CFR 34.31(a)(4).

2. As of the date of the inspection, an individual was permitted to act as a radiographer's assistant who had not demonstrated competence in the use of radiographic equipment in accordance with Condition 18.A. of License No. 13-00155-10, which incorporates the statements, representations, and procedures contained in Item 8 of the license application dated March 28, 1990 and 10 CFR 34.31(b)(3).

3. The Licensee failed to utilize the Internal Inspection of Radiographer's Check List, during the period of February through July 1992, as required by Condition 18.A. of License No. 13-00155-10, which incorporates the statements, representations, and procedures contained in Exhibit 2 of the license application dated March 28, 1990.

4. The Licensee failed to perform audits of practicing radiographers and radiographers' assistants at intervals not to exceed three months on at least eight occasions from February through August 1992, as required by Condition 18.A. of License No. 13-00155-10, which incorporates the statements, representations, and procedures contained in Item 10.3a of the license application dated March 28, 1990.

5. The Licensee failed to record the results of daily equipment inspections before use on at least 10 occasions during the period of February through August 1992, as required by Condition 18.A. of License No. 13-00155-10, which incorporates the statements, representations, and procedures contained in Item 10.5 of the license application dated March 28, 1990.

6. As of the date of the inspection, one radiographer routinely failed to survey the entire circumference of the radiographic exposure device after each exposure as required by 10 CFR 34.43(b).

7. As of the date of the inspection, one radiographer routinely failed to secure the sealed source in the shielded position using the projector (radiographic exposure device) lock each time the source is returned to that position as required by Condition 18.A. of License No. 13-00155-10, which incorporates the statements, representations, and procedures contained in Appendix B, Item D.g.26 of the license application dated March 28, 1990.

In addition, the Licensee has informed the NRC that it conducted its own internal investigation into the activities of Mr. Berna. The Licensee has informed the NRC that immediately following the September 15, 1992, NRC inspection, Mr. Berna either falsified radiographer field audit records or he arranged with an Assistant Radiation Safety Officer to fabricate records of audits of radiographers. Such actions constitute violations of 10 CFR 30.9(a) and 10 CFR 30.10(a).

III

To preclude recurrence of any of the violations described above, and in particular those violations which appear to be willful, the Licensee notified the NRC in a meeting held on October 23, 1992, and by letter dated October 27, 1992, that:

A. Effective October 15, 1992, the Licensee had voluntarily suspended all activities under License No. 13-00155-10 and placed all NRC-licensed materials in safe, locked storage at the facility specified in the license.

B. Effective October 16, 1992, the Licensee had removed the RSO from all activities under NRC License No. 13-00155-10.

C. During October 1992, the Licensee had implemented new controls to track, schedule and document field audits of radiographers. Those controls consisted of: (1) Developing a computerized data base, (2) requiring all radiographers and radiographer's assistants to be aware of their individual audit status, and (3)

requiring the signatures of both the auditor and the person audited on the audit form.

Additionally, the Licensee agreed:

D. To obtain an independent assessment of all aspects of the radiation safety program using a contractor with expertise in industrial radiography and NRC rules, regulations and procedures.

E. Not to resume licensed activities until prior approval is obtained from the NRC.

I find that the Licensee's commitments, as described to the NRC during the meeting on October 23, 1992, and as set forth in its letter of October 27, 1992, are acceptable and necessary and I conclude that with these commitments the public health and safety is reasonably assured. In view of the foregoing, I have determined that public health and safety require that the commitments made by the Licensee during the October 23, 1992, meeting and in the Licensee's letter dated October 27, 1992, be confirmed by this Order. The Licensee has agreed to this action.

IV

Pursuant to 10 CFR 2.202, I have also determined that the significance of the violations and the conduct described above is such that the public health and safety require that this Order be effective immediately, for the following reasons:

1. Industrial radiography carries a particularly high risk to not only those directly performing the radiographic exposure, but also to members of the public in the immediate area of the radiographic operation because of the high activity levels of radiographic sources used in industrial radiography.

2. Due to the relatively small number of NRC personnel and the vast number of NRC licensees, the NRC is unable to inspect every NRC licensee during every radiographic activity. Instead, the NRC must rely upon the licensee to audit its own activities and to keep accurate records regarding those audits.

3. A field audit of radiographic personnel is a very effective method to establish that operations are being performed using safe methods and according to the regulations and license conditions established by the NRC. Therefore, NRC licensees are required to establish a program whereby their supervisory personnel conduct such audits of their licensed activities on a periodic basis.

4. Because the NRC relies upon the Licensee's records for proof that the licensed activities are being conducted in the best interests of the public health and safety, the NRC must have confidence in the integrity of the Licensee personnel who are responsible for compiling and maintaining those records.

5. Based upon the NRC inspection and investigation conducted in this case to date, the NRC Staff has determined that the Licensee employee charged with the responsibility of compiling and maintaining the records required by regulation has deliberately falsified those records.

6. In addition, the NRC Staff has determined that the Licensee does not have in place an adequate system to allow its management to identify deficiencies in its program of licensed activities.

7. Based upon the evidence discussed above, the NRC Staff does not have reasonable assurance that the Licensee's radiation safety program was being operated at that time, or would be operated in the future, in a manner that would protect the public health and safety without changes in the licensed activities. Therefore, the NRC finds that the immediate removal of the Licensee's authorization to conduct radiography under its NRC license is in the interest of the public health and safety.

8. Until the Licensee has established a program that corrects the deficiencies described above and until the NRC is satisfied that the Licensee has assigned qualified and competent personnel of the requisite integrity to operate that program, the NRC cannot have reasonable assurance that the Licensee will conduct licensed activities with due regard for public health and safety. Therefore, the NRC finds that reinstatement of the license should not occur until the NRC has reviewed and approved the Licensee's actions correcting the defects set forth above in accordance with the commitments expressed in the Licensee's letter of October 27, 1992.

V

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, it is hereby ordered, effective immediately, that license No. 13–00155–10 is modified as follows:

A. All activities under License No. 13–00155–10 remain suspended and all NRC-licensed materials must be maintained in safe, locked storage at the facility specified in the license.

B. The RSO currently listed on the license, Mr. Berna, shall not serve as Radiation Protection Officer, Radiation Safety Officer, or in any other position involving the performance or supervision of any NRC-licensed activities.

C. The Licensee shall implement the controls necessary to track, schedule and document field audits of radiographers, including: (1) Developing a computerized data base, (2) requiring all radiographers and radiographer's assistants to be aware of their individual audit status, and (3) requiring the signatures of both the auditor and the person audited on the audit form, should licensed activities be resumed.

D. The Licensee is required to obtain an independent assessment of all aspects of the radiation safety program using an individual, or group of individuals, with expertise in industrial radiography and NRC requirements.

E. The Licensee shall not resume licensed activities until prior approval is obtained from the NRC.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee, in writing, of good cause.

VI

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Assistant General Counsel for Hearings and Enforcement at the same address, the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, and the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), any person adversely affected by this Order, other than the Licensee, may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the

immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 1st day of December, 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 92-29832 Filed 12-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 15000004, EA 92-127]

CTI, Inc. (Martinez, CA; Order Imposing Civil Monetary Penalty

I

CTI, Incorporated (CTI or Licensee) is the holder of a general license issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 150.20. The general license authorizes CTI to perform radiography in areas under Federal jurisdiction in accordance with the conditions specified in its State of California License No. 2851-07 and 10 CFR 150.20(b).

II

An inspection of the Licensee's activities was conducted on June 16 and July 1-2, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated September 2, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that CTI violated, and the amount of the civil penalties proposed for the violations. CTI responded to the Notice in a letter dated October 6, 1992.

In its response, the Licensee admits two violations of NRC requirements, one for failure to use separate personnel alarm ratemeters with a preset alarm of 500 mR/hr, and the second for failure to post a high radiation area during radiography operations. The Licensee questions the validity of a third violation for failure to conduct complete circumferential radiation surveys of an exposure device. The Licensee admits that a demonstration survey by its radiographer did not comply with the requirement for complete circumferential surveys, but questioned whether the radiographer's survey and statements to the inspector were representative of actual survey practice. CTI submits the following arguments in protesting the severity level and amount of civil penalties proposed:

1. CTI questions the NRC's application of the examples in Supplement I (Reactor Operations), appendix C, 10 CFR part 2, to Violations I.A. and I.B. in the Notice.

2. CTI objects to NRC's characterization of Violations I.A and I.B as indicating CTI's lack of attention or carelessness toward licensed responsibilities.

3. CTI asserts that it intended to operate its radiography program in a safe manner and to comply with all State and Federal regulations. The Licensee claims this was demonstrated by its candor and integrity during the NRC inspection, and by its performance, based on past inspections conducted by the State of California, which had indicated no significant safety problems to warrant civil penalties of the magnitude assessed by NRC. CTI relies upon a letter dated September 8, 1992, from Mr. Edgar Bailey, Chief of the California Radiologic Health Branch, to the NRC Office of State Programs, in support of its position that the severity of violations does not merit the amount of civil penalties imposed.

III

After consideration of the Licensee's response and the statements of fact, explanation, and letter of protest contained therein, the NRC staff has determined, as set forth in the appendix to this order, that the violations occurred as stated and that the penalties proposed for the violation designated in the Notice should be imposed.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered*, That:

CTI, Inc., pay civil penalties in the amount of $12,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California, 94596.

If a hearing is requested, the Commission will issue an order designating the time and place of the hearing. If CTI fails to request a hearing within 30 days of the date of this order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the requirement for complete circumferential surveys of the exposure device, and

(b) Whether, on the basis of such violation and the additional violations set forth in the Notice of Violation that the Licensee admitted, this order should be sustained.

Dated at Rockville, Maryland this 1st day of December 1992.

For the U.S. Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Material Safety, Safeguards and Operations Support.

Appendix to Order Imposing Civil Penalties

On September 2, 1992, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection. CTI, Inc. (CTI) responded to the Notice on October 6, 1992 in a "Reply to a Notice of Violation * * *" (Reply).

In its reply, CTI admits two violations, one for failure to use required personnel alarm ratemeters and another for failure to post a high radiation area, questions the violation for failure to perform a full circumferential survey of the exposure device, and protests the severity level and magnitude of the civil penalties proposed. The NRC's evaluation and conclusion regarding the Licensee's response is as follows:

Restatement of Violation I.A.

10 CFR 34.33(a) and (f) require, in part, that the licensee not permit any individual to act as a radiographer or a

radiographer's assistant unless, at all times during radiographic operations, the individual wears an alarm ratemeter set to give an alarm signal at a preset dose rate of 500 mR/hr.

Contrary to the above, on June 15–16, 1992, at Moffett Field, California, licensee radiographers did not wear alarm ratemeters set to give an alarm at a preset dose rate of 500 mR/hr while conducting radiographic operations.

Summary of the Licensee's Response to Violation I.A.

CTI admits that the use of alarming survey meters set at 8 and 80 mR/hr during licensed radiography did not comply with the requirement in 10 CFR 34.33(f)(2) for alarming ratemeters set at 500 mR/hr. CTI states that it had intended to comply with 10 CFR 34.33(a), by assigning to each person, personnel monitoring equipment consisting of a survey alarm meter with a belt clip, a direct reading pocket dosimeter and a film badge.

NRC Evaluation of the Licensee's Response to Violation I.A.

The Licensee admits the violation for using personnel alarm rate meters without a preset alarm of 500 mR/hr. Also, CTI's use of survey meters with a built-in audible alarm did not comply with 10 CFR 34.33(a). "Survey meters with audible alarms do not provide the same redundancy that separate alarm ratemeters do, primarily because the alarm is connected to the survey meter output and if the survey meter fails, so does the audible alarm." Statements of Consideration, Safety Requirements for Industrial Radiographic Equipment, 55 FR 843, 850 (January 10, 1990).

Restatement of Violation I.B.

10 CFR 34.43(b) requires, in part, the licensee to perform a survey with a calibrated and operable radiation survey instrument after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on June 16, 1992, at Moffett Field, California, a licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source has been returned to its shielded position, in that the survey did not include the entire circumference of the radiographic exposure device.

Violations A and B above constitute a Severity Level III problem (Supplements IV and VI). Cumulative Civil Penalty—$5,000 assessed equally between the two violations.

Summary of the Licensee's Response to Violation I.B.

CTI states that the violation "* * * is not based on direct observation but rather on observation of a requested demonstration survey and subsequent questioning by the NRC inspector." Although the Licensee agrees that the survey as demonstrated by the radiographer did not fully comply with 10 CFR 34.43(b), CTI questions the violation's validity by raising the possibility that the demonstration survey and statements made by the radiographer to the inspector "* * * reflect a response to a perceived intimidating interrogation rather than his actual practice." The Licensee supports its conclusion by stating that prior and subsequent CTI field audits demonstrated that the radiographer routinely performs surveys in full compliance with 10 CFR 34.43(b).

NRC Evaluation of the Licensee's Response to Violation I.B.

NRC disagrees with CTI's suggestion that no violation may have occurred. Immediately following termination of CTI's operations at the job site, the inspector specifically asked the radiographer to demonstrate with a survey meter how he had conducted his survey of the exposure device after the two previous source exposures. The radiographer's simulated survey included only the left side and front of the exposure device near the source tube connector. The inspector then questioned the radiographer to determine if the survey as demonstrated was the same as those he had just conducted following the two previous source exposures. The radiographer replied that the surveys were the same and typical of those he routinely conducts during radiography. The radiographer indicated his desire to be truthful, while admitting that the surveys he routinely conducted were "shortcuts" to full circumference surveys but were adequate to detect an unshielded source. When the radiographer was questioned again by the inspector two weeks later at CTI's office, the radiographer confirmed that he had not performed the required full circumference surveys.

Restatement of Violation I.C.

10 CFR 34.42 requires, notwithstanding any provision in 10 CFR 20.204(c), that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.203(c)(1).

10 CFR 20.203(c)(1) requires that each high radiation area be conspicuously posted with a sing or signs bearing the radiation caution symbol and the words "CAUTION HIGH RADIATION AREA."

Contrary to the above, on June 16, 1992, at Moffett Field, California, the licensee did not post the high radiation area in which industrial radiography was being performed.

This is a Severity Level III violation (Supplements IV and VI). Civil Penalty—$7,500.

Summary of the Licensee's Response to Violation I.C.

CTI admits that the high radiation area was not posted as required but argues that CTI radiographers had exercised other radiation safety controls over the job site, demonstrating that the failure to post the high radiation area was not an "intentional or premeditated disregard" for posting requirements. CTI states that these actions included posting and monitoring the perimeter of the controlled area, constant visual surveillance of the radiation area and high radiation area, and advance notice to NRC and to site personnel of radiographic operations and other actions.

NRC Evaluation of the Licensee's Response to Violation I.C.

The Licensee admits not posting the high radiation area as required by 10 CFR 20.203(c)(1) and 10 CFR 34.42. The actions cited by CTI as examples of its controls to prevent access to the radiation and high radiation areas are required by NRC in addition to, and not as a substitute for, the separate requirement to post the high radiation area. Such posting was especially necessary in this case because of the presence of other non-radiography contractor personnel inside the posted restricted area boundary and their potential access to the high radiation area while the radioactive source was exposed.

The NRC labelled this violation as willful based on the radiographer's careless disregard for NRC requirements. There was no NRC conclusion of an intentional or premeditated violation. The Licensee has provided no basis to revise this conclusion. Both CTI radiographers at the site admitted their decision to continue with radiography without posting the high radiation area after they found high radiation area warning signs missing from the CTI truck.The radiographers acknowledged that they were aware of the requirement for, and normally post, such signs but added that visual surveillance and the posting of

the fenced restricted area boundary with radiation area warning signs was sufficient. The decision by the radiographer not to post and instead to rely on surveillance and lesser posting actions constituted a careless disregard for NRC posting requirements.

Summary of Licensee's Request for Mitigation

Although CTI does not specifically request remission or mitigation of the civil penalties proposed, it protests the severity level and amount of the penalties with the following arguments:

1. CTI questions the NRC's application of 10 CFR part 2, appendix C, Supplement I (Reactor Operation), to Violations I.A. and I.B.

2. CTI objects to NRC's characterization of Violations I.A and I.B based on 10 CFR part 2, appendix C, supplements IV and VI, as a "potentially significant lack of attention or carelessness toward licensed responsibilities." The Licensee acknowledges administrative problems with documentation in its radiation safety program but maintains that such problems and subsequent corrective actions did not constitute carelessness toward licensed responsibilities.

3. CTI asserts a willingness to operate its radiography program in a safe manner and to comply with all State and Federal regulations. The Licensee claims that this intent was demonstrated by its candor and integrity during the current NRC inspection and in past inspections conducted by the State of California, which had indicated no significant safety problems that would warrant civil penalties of the magnitude assessed by NRC. CTI relies upon a letter dated September 8, 1992, from Mr. Edgar Bailey, Chief of the California Radiologic Health Branch, to the NRC Office of State Programs, in support of its position that the severity of violations does not merit the amount of civil penalties imposed.

NRC Evaluation of Licensee's Request for Mitigation

NRC addresses CTI's arguments in the order presented above.

1. The reference in section I of the Notice to supplement I was a typographical error and was intended to reference Supplement IV (Health Physics). No mitigation is warranted based on this error.

2. NRC disagrees with CTI's claim that Violations I.A and I.B did not represent a significant lack of attention or carelessness toward licensed responsibilities. Most, if not all, of the NRC-identified violations could have been prevented had Licensee management devoted sufficient attention and effort to its program to ensure compliance with NRC and State license requirements. Deficiencies in the licensed program were known at the management level by early 1992. When the Radiation Safety Officer (RSO) terminated employment, a new RSO was designated, but other duties prevented him from making the needed administrative improvements. Consequently, the licensed program lacked adequate oversight, compliance with program requirements was delayed, and the program continued to deteriorate until the NRC inspection.

The three violations were assessed civil penalties in accordance with the NRC's Policy and Procedure for Enforcement Actions, 10 CFR part 2, appendix C (57 FR 5791, February 18, 1992) (Enforcement Policy). The failures to perform a proper radiation survey and to wear proper personnel monitoring devices, as required by 10 CFR part 34, would normally have been classified as separate Severity Level III Violations with separate civil penalties in accordance with the Enforcement Policy (supplement IV, example C.4 and supplement VI, example C.8). However, in this instance, the NRC did not consider that the safety significance of the violations warranted separate penalties. Accordingly, two violations were combined as a Severity Level III problem, as permitted by section IV.A of the Enforcement Policy, because they were both caused by a lack of adequate attention or carelessness toward licensed responsibilities on the part of CTI management and the radiographer. Specifically, CTI management was aware of the requirements for alarm rate meters, had purchased the instruments, could not locate them for the job, and yet made the decision to conduct the radiography without equipment that fully satisfied NRC requirements. Similarly, the radiographer acknowledged that he had been trained on, and had knowledge of, the required survey techniques, yet he indicated that he typically did not perform them as specifically required by the NRC. Collectively, these decisions represent a significant regulatory concern because we cannot accept decisions by Licensee or its personnel to employ lesser safety precautions as an acceptable alternative to compliance with the NRC requirements.

The violation involving the failure to post a high radiation area was escalated from a Severity Level IV to a Severity Level III violation, in accordance with section IV.C. of the Enforcement Policy, because the CTI radiographers willfully violated the NRC requirement for posting (careless disregard being a form of willfulness).

3. NRC recognizes the Licensee's candor and cooperation during the inspection. The NRC relies upon, and expects, licensees to be accurate and forthright in providing information to the NRC to ensure that licensed materials do not endanger public health and safety. Although CTI expresses its intent and strong desire to operate in a safe manner and to comply with NRC regulatory and license requirements, such intent and desire to do not provide a basis under the Enforcement Policy for mitigating a civil penalty or for reducing the severity level of a violation. Instead, the Envorcement Policy provides for escalation of the severity level of a violation which is willful, either because of deliberateness or careless disregard (section IV.C). NRC's review of the results of inspections of CTI by the State of California during the past 5 years indicates that several significant violations had been identified and that CTI's overall performance was no better than average. Furthermore, the independent audit contracted by CTI following the NRC inspection, and included as an attachment to the Licensee's October 6, 1992 letter, disclosed several radiation safety program deficiencies resulting from the lack of adequate attention to licensed responsibilities. The letter from the State of California does not address the application of the NRC Enforcement Policy to this enforcement action nor provide a basis for mitigation of the civil penalties for the violations. The NRC Enforcement Policy applies to licensees performing activities in NRC jurisdiction. NRC does not agree with the observations concerning severity levels.

NRC Conclusion

The NRC has concluded that the violations occurred as stated and that neither an adequate basis for a reduction in the severity level nor for mitigation of the civil penalties was provided by CTI, Inc. Consequently, the proposed civil penalties in the amount of $12,500 should be imposed.

[FR Doc. 92-29833 Filed 12-8-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Turkey Point Nuclear Generating Units 3 and 4; Receipt of Petition Under 10 CFR 2.206

Notice is hereby given that, on October 15, 1992, Mr. Regino R. Diaz-

Robainas (Petitioner) filed a Petition pursuant to 10 CFR 2.206 with the Director of the Office of Nuclear Reactor Regulation regarding the Turkey Point Nuclear Generating Units of the Florida Power and Light Company (FPL or Licensee). In addition, on October 21, 1992, the petitioner filed an addendum to the Petition.

The Petition alleged a number of deficiencies with the Turkey Point units. The alleged deficiencies include concerns with adequacy of fire protection systems and features; adequacy of physical security systems; adequacy of design basis and technical specifications of the Turkey Point units; adequacy of emergency diesel generators; availability of critical communication and evacuation mechanisms during events such as Hurricane Andrew; technical specification and procedural violations; adequacy of the diesel generator loading profile; availability of sufficient workers to support the Turkey Point units; reliability of the overpressure mitigation system; need for a Failure Mode and Effects Analysis before start-up; the adequacy of data on monitored radiation, contamination and exposure from August 24, 1992, to date; interactions between the fossil and nuclear units at the site; use of FPL management safety evaluations in place of engineering packages; the adequacy of safety evaluations prepared by the Licensee and concern that those safety evaluations represent a pattern of violations of the requirements of 10 CFR 50.59; and concerns about the ethics and prudence of current FPL management.

Based on these allegations, the Petitioner requested that the Turkey Point units, which are presently shut down, not be permitted to restart until Petitioner's concerns are addressed. In a letter of October 23, 1992, the Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request that the NRC take action to prohibit the restart of the Turkey Point units pending a response to the concerns of the Petition.

The Director of the Office of Nuclear Reactor Regulation is reviewing the Petition to prepare a response. As provided by 10 CFR 2.206, the NRC will take appropriate action on the specific issues raised in the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Turkey Point plant located at Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 23rd day of October, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-29835 Filed 12-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power & Light Co., Turkey Point Nuclear Generating Plant; Receipt of Petition

Notice is hereby given that, on October 23, 1992, Mr. James P. Riccio submitted a Petition to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 about the nuclear units at the Turkey Point Nuclear Generating Plant of the Florida Power & Light Company (FP&L or Licensee). The Petition was submitted on behalf of Public Citizen, Greenpeace, Nuclear Information & Resource Service, and the Safe Energy Communication Council (Petitioners). The Petition has been referred to the Office of Nuclear Reactor Regulation to prepare a response.

The Petitioners alleged a number of deficiencies with emergency planning at the Turkey Point Units because of the effects of Hurricane Andrew. The Petitioners alleged deficiencies with notification during an accident, notification of persons with special needs, and evacuation plans. In alleging these deficiencies, Petitioners relied in part on a preliminary report prepared by the Federal Emergency Management Agency (FEMA) that was forwarded to the NRC on October 16, 1992. The Petitioners also alleged deficiencies in the coordination between the Licensee, and Federal, State and local agencies responsible for radiological emergency response planning based on the circumstances surrounding the initial restart of the Turkey Point Unit 4 following Hurricane Andrew. The Petitioners alleged that the NRC allowed the Licensee to restart the reactor without any coordination, advance notice, or request that FEMA confirm offsite capabilities.

Petitioners requested that the NRC issue an order to show cause to the Licensee as to why the nuclear units at Turkey Point should not remain closed or have their operating licenses suspended by the NRC unless and until such time as the Licensee demonstrates full compliance with the NRC's emergency planning regulations. In a letter of November 13, 1992, the Petitioners' request that the Turkey Point Nuclear Units not be permitted to restart was denied.

As provided by 10 CFR 2.206, the NRC will take appropriate action on the specific issues raised in the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Turkey Point plant located at Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 13th day of November, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-29836 Filed 12-8-92; 8:45 am]

BILLING CODE 7590-01-M

Florida Power Corp.; Withdrawal of Application for Amendment to Facility Operating License

[Docket No. 50-302]

The United States Nuclear Regulatory Commission (the Commission) has granted the request for Florida Power Corporation (the licensee) to withdraw its August 15, 1991, application for proposed amendment to Facility Operating License No. DPR-72 for Crystal River, Unit 3, located in Crystal River, Florida.

The proposed amendment would have revised the Technical Specifications to add a new action to the Crystal River Unit 3 Containment Air Lock specification.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 1, 1992 (57 FR 11108). However, by letter dated October 23, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 15, 1991, and the licensee's letter dated October 23, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34429.

Dated at Rockville, Maryland, this 27th day of November, 1992.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-29838 Filed 12-8-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-63A]

Termination of Section 301 Investigation and Action Regarding the European Community's Oilseeds Subsidy Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of investigation and action pursuant to section 301 of the Trade Act of 1974, as amended; cancellation of public comment proceedings and public hearing concerning possible further action; and notice of monitoring pursuant to section 306 of the Trade Act.

SUMMARY: On November 5, 1992, the United States Trade Representative (USTR or Trade Representative) determined, pursuant to section 301(a) of the Trade Act of 1974, as amended (Trade Act), that subsidies on oilseeds granted by the European Community (EC) continue to deny benefits of the United States under the General Agreement on Tariffs and Trade (GATT). In a notice issued that day, the USTR announced, pursuant to section 301(c), an increase in duties to 200 percent *ad valorem* on certain EC goods to be effective December 5, 1992. Also on November 5, 1992, by separate notice, the USTR requested public comment concerning a list of additional items upon which duties could be increased if the EC continued to deny benefits of the United States. The USTR directed the section 301 Committee to hold a public hearing on December 10, 1992, concerning the proposed further action.

On November 20, 1992, the United States and the EC reached an agreement that, once implemented, will resolve this dispute. On December 4, 1992, the USTR received confirmation of the agreement from the EC. Consequently, the USTR has determined to (1) withdraw the increased duties scheduled to go into effect on December 5, 1992; (2) cancel the public comment proceedings and public hearing concerning possible further action; and (3) terminate the investigation of the EC's oilseeds subsidy regime. The USTR also has instructed the section 301 Committee to monitor the EC's compliance with the agreement pursuant to section 306 of the Trade Act.

DATES: Effective December 4, 1992, the increased duties announced on November 5, 1992, and scheduled to go into effect on December 5, 1992 are withdrawn. Because the public comment proceedings announced on November 5, 1992, and the public hearing scheduled for December 10, 1992, are canceled, all of the deadlines announced in the November 5, 1992 notice concerning the supplemental list of products for possible further action are moot.

ADDRESS: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Director for European Community Affairs, (202) 395-3074; Marilyn Moore, Senior Economist, (202) 395-5006; Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395-7305; for media inquiries, Christopher Allen, Director of Press Relations, (202) 395-6120.

SUPPLEMENTARY INFORMATION: On January 5, 1988, the Trade Representative initiated an investigation pursuant to section 301 of the Trade Act concerning the EC's acts, policies, and practices concerning oilseeds. After consultations failed to resolve the dispute, the United States requested the GATT Council of Representatives (GATT Council) to establish a dispute settlement panel. The GATT panel found in 1989 that EC subsidies impaired benefits accruing to the United States under the duty-free tariff bindings on oilseeds granted by the EC to the United States. On January 25, 1990, the GATT Council adopted the panel report.

On May 24, 1991, the EC advised that it would implement the GATT panel's recommendations by October 31, 1991, and that the reforms would apply to all oilseeds harvested during calendar year 1992 and thereafter. The EC subsequently proposed a new subsidies regime that purported to comply with the GATT panel's recommendations. After reviewing the new regime, the United States proposed that the GATT panel be reconvened to consider whether the EC had implemented the panel's findings.

On March 31, 1992, the reconvened panel confirmed that the EC is continuing to impair its duty-free tariff bindings on oilseeds. The reconvened panel recommended that the EC move expeditiously to bring its support system into conformity with the GATT or renegotiate its tariff concessions under Article XXVIII of the GATT. At the GATT Council meeting on April 30, 1992, the EC indicated that it was not yet prepared to agree to either course of action.

On June 12, 1992, the USTR published a notice of proposed determination of action and request for public comment. 57 FR 25087. In view of the EC's failure to comply with the GATT panel reports, the USTR proposed, pursuant to sections 301(a) and 301(c) of the Trade Act, to increase duties affecting up to $1 billion of EC imports into the United States, which is equivalent to the burden or restriction imposed upon United States commerce by the EC's oilseeds subsidies. The USTR also published a list of primarily agricultural products from which products could be selected for the imposition of increased duties.

On November 5, 1992, after intensive negotiations failed to resolve the dispute, the USTR decided, as an initial response, to increase duties to 200 percent *ad valorem* upon certain EC products. 57 FR 53801 (Nov. 12, 1992). The products subject to this increase were among those identified in the June 12, 1992 notice. The amount of trade affected was equivalent to 30 percent of the value of the burden or restriction imposed upon United States commerce by the EC's oilseed subsidies.

Also on November 5, 1992, the USTR announced that duties on additional imports of EC goods would be imposed, up to an amount equivalent to the total burden or restriction imposed upon United States commerce by the EC's oilseed subsidies, if the EC continued to deny benefits of the United States. 57 FR 53796 (Nov. 12, 1992). The Trade Representative supplemented the original list of products that could be subjected to increased duties with a list of primarily industrial products. The Trade Representative explained that, if further action were taken, the additional products to be subjected to increased duties would be selected from among the remaining agricultural products included in the original list, as well as from the industrial products included in the supplemental list. Public comments were invited concerning the items set forth on the supplemental list, and a public hearing was scheduled for December 10, 1992.

On November 20, 1992, the United States and the EC reached an agreement that, once implemented by the EC, will resolve this dispute. On December 4, 1992, the USTR received confirmation of this agreement from the EC. Based upon this agreement, and in the expectation that the EC will fully implement the commitments contained

in the agreement, the USTR has determined that this investigation should be terminated. Pursuant to section 307(a)(1)(A) of the Trade Act, the USTR also has terminated the action announced on November 5, 1992, and the increased duties scheduled to become effective on December 5, 1992 are therefore withdrawn. The United States Customs Service has been notified of this determination.

In view of the termination of this investigation, the public comment proceedings and public hearing scheduled for December 10, 1992, concerning possible further action are canceled. The USTR has instructed the section 301 Committee to monitor the EC's compliance with the agreement in accordance with section 306 of the Trade Act.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-29885 Filed 12-8-92; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Requests for Consultative Medical Examinations
(2) *Form(s) submitted:* RL-12/ID-31a
(3) *OMB Number:* 3220-0124
(4) *Expiration date of current OMB clearance:* One year from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On Occasion
(7) *Respondents:* Businesses or other for profit
(8) *Estimated annual number of respondents:* 10,050
(9) *Total annual responses:* 10,050
(10) *Average time per response:* 1
(11) *Total annual reporting hours:* 10,050
(12) *Collection description:* Under section 2 of the RRA and section 2 of the RUIA, disability and sickness benefits are respectively provided for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-29782 Filed 12-8-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31555; File No. SR-NASD-92-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

December 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1992 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing an interpretation of an existing rule, pertaining to the Association's periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers.

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 NASD 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 NASD 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

The purpose of the rule change is to notify the Commission of the reclassification of some 538 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security semiannually to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of August 31, 1992, using the established criteria:

A 1,000-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers.[1]

The 538 Nasdaq/NMS securities will be reclassified on December 1, 1992, and are set out in the NASD's Notice To Members 92-62 (November 1992).

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rulemaking initiatives of the NASD be designed 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 open market." The NASD believes that the reassessment of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the Nasdaq market.

[1] NASD Securities Dealers Manual, Rules of Practice and Procedure for the Small Order Execution System, CCH, ¶2451, footnote 1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section (19)(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the proposal has been filed as a "stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule." At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. 92-29788 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

Performance Review Board; Membership

AGENCY: Securities and Exchange Commission.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Securities and Exchange Commission announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 11, 1992.

FOR FURTHER INFORMATION CONTACT: Susan Baumann, U.S. Securities and Exchange Commission, Washington, DC 20549 (202) 272-2700.

The following are the names and present titles of the individuals appointed to the Performance Review Board established by the U.S. Securities and Exchange Commission.

Name, Title and Organization

Barbara Green, Executive Assistant & Senior Advisor, Office of the Chairman

James McConnell, Executive Director, Office of the Executive Director

John Innocenti, Associate Executive Director, Office of Human Resources Management

Marianne Smythe (Alternate), Director, Division of Investment Management

For the Chairman, by the Executive Director, pursuant to delegated authority.

Dated: December 3, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29837 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19130; No. 811-3038]

American General Money Market Accumulation Fund, Inc.

November 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: American General Money Market Accumulation Fund, Inc. (the "Applicant")

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that is has ceased to be an investment company as defined by 1940 Act.

FILING DATES: The application was filed on September 25, 1992 and amended on November 12, 1992.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant: American General Money Market Accumulation Fund, Inc., 2800 Post Oak Boulevard, Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney, at (202) 272-2676, or Wendell Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the applicant; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was organized as a corporation on March 26, 1980 under the laws of Maryland. The Applicant remains in existence and in good standing in Maryland.

2. On April 7, 1980, the Applicant filed a Notification of Registration as an open-end investment company on Form N-8A, and its initial registration statement on Form N-1 under the 1940 Act and under the Securities Act of 1933 (Filed No. 2-67226). Five hundred million (500,000,000) shares of common stock, all of one class, $0.01 par value per share ("Common Stock"), were registered at that time. Applicant's registration statement became effective and its shares were publicly offered beginning on April 11, 1980.

3. On July 24, 1991, the Applicant's Board of Directors ("Board") authorized the Applicant to join in the filing of an Application ("Application") for: (i) An Order under Section 26(b) of the 1940 Act approving the substitution of shares

of American General Series Portfolio Company ("AGSPC") and American Capital Life Investment Trust ("LIT Fund") for shares of the Applicant, and (ii) an Order under Section 17(b) or, alternatively, section 6(c) of the 1940 Act exempting the Applicant from sections 17(a)(1) and 17(a)(2) of the 1940 Act to the extent necessary to permit certain purchase and sale transactions between affiliates in connection with the substitution. On September 20, 1991, the Commission issued an order granting the Application (Investment Co. Act Rel. No. 18326).

4. On September 12, 1991, the Board authorized the dissolution of Applicant. No vote of Applicant's security holders was required by law, and none was sought. No proxy materials were distributed to Applicant's security holders.

5. On September 30, 1991, the Applicant had 28,887,625 shares of Common Stock outstanding, for an aggregate net asset value of $28,887,625.2, or $1.00 per share.

6. Effective September 30, 1991, the Applicant transferred all of its assets to AGSPC and LIT Fund in the amounts of $16,681,975 and $12,205,650 in cash, respectively, on behalf of, and as directed by, its security holders to satisfy redemption requests made by them in connection with the substitution.

7. The Applicant had structured its investment portfolio so that its portfolio securities would automatically convert to cash by their own terms on the date the substitution was consummated.

8. The Applicant bore all expenses it incurred in connection with carrying out its part of the substitution. These expenses consisted of legal fees, printing, postage/shipping and filing fees. The Applicant, in turn, allocated its expenses to its investment adviser, American Capital Asset Management, Inc.

9. Applicant has no security holders to whom distributions to complete liquidation have not been made. The Applicant has no security holders, assets or liabilities.

10. The Applicant has not, within the last 18 months, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were Applicant's security holders.

11. Applicant is not a party to any litigation or administrative proceeding.

12. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

13. As of the date of filing of the Application the Applicant was current in all filing required to be made under the 1940 Act, including Form N-SAR.

14. The Applicant will file Articles of Dissolution in accordance with Maryland law after receipt of an order of the Commission declaring that the Applicant is no longer an investment company under the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29792 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19141; 812-8002]

Chicago Milwaukee Corporation, et al.; Notice of Application

December 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Chicago Milwaukee Corporation ("CMC") and Milwaukee Land Company ("MLC").

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from the provisions of section 17(a) and pursuant to section 17(d) and rule 17d-1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit a registered investment company to transfer certain assets to an affiliate, followed by an in-kind distribution of the affiliate's securities to the investment company's shareholders.

FILING DATE: The application was filed on July 29, 1992 and amended on November 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 547 West Jackson Boulevard, suite 1510, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. CMC and MLC are registered under the Act as closed-end, non-diversified investment companies. MLC is a wholly-owned subsidiary of CMC. CMC has two classes of shares outstanding, common stock, par value $1.00 per share, and $5 prior preferred stock, without par value, both of which are listed on the New York Stock Exchange.

2. On July 28, 1992, CMC's board of directors approved a plan to convert CMC into an open-end management investment company (the "Conversion"). The Conversion is being undertaken to provide CMC's shareholders with the right to have their shares redeemed at such times as they may choose at prices based on the net asset value of such shares instead of at a discounted price set by the market.

3. The Conversion represents the final step in CMC's transformation from an industrial company to a registered open-end management investment company. In June 1990, as a means of separating CMC's real estate operations from CMC's investment company business, CMC transferred all of its respective real estate properties, together with certain other assets and liabilities, to a newly-formed operating general partnership, CMC Heartland Partners ("CMC Heartland"). Heartland Partners, L.P. ("Heartland") owns a 99.99% general partnership interest in CMC Heartland, and the remaining .01% general partnership interest is owned by MLC. MLC also owns a 1% general partnership interest in Heartland. Following the asset transfer to CMC Heartland, CMC made a *pro rata* distribution by way of spinoff of all the outstanding Class A limited partnership interest in Heartland to CMC's common shareholders.[1]

4. MLC serves as the general partner of Heartland and the managing general

[1] The SEC granted CMC exemptive relief to permit the Heartland spinoff. Investment Company Act Release Nos. 17199 (Oct. 31, 1989) (notice) and 17414 (Apr. 9, 1990) (order).

partner of CMC Heartland. Heartland and CMC Heartland have entered into a management agreement with CMC for a ten-year term beginning in 1990 whereby CMC, if requested, will furnish to Heartland and CMC Heartland various management services for an annual fee (the "Management Agreement").

5. To accomplish the Conversion and provide CMC with the appropriate asset composition and capital structure to operate as an open-end management investment company, CMC proposes to: (a) transfer all of its illiquid assets to MLC; (b) simultaneously redeem all its outstanding preferred stock; and (c) distribute the capital stock of MLC on a *pro rata* basis by way of a spinoff to the holders of CMC common stock.

6. CMC's illiquid assets include, among other things: (a) The capital stock of MLC; (b) the rights of CMC pursuant to the Management Agreement; (c) CMC's Class B limited partnership interest in Heartland which entitles CMC to an allocation of 0.5% of Heartland's profits and losses and, upon liquidation, to receive an amount equal to its capital account (the "Class B Interest"); and (d) a waste water treatment plant.

7. On November 2, 1992, CMC's board of directors approved a merger transaction whereby CMC will change its state of incorporation from Delaware to Maryland by merging into CMC Maryland Corp. ("New CMC"), a newly-formed Maryland corporation and wholly-owned subsidiary of CMC (the "CMC merger"). The CMC merger will enable CMC to decrease certain costs associated with preparing proxy materials and soliciting shareholders' votes at annual meetings. In addition, the franchise tax New CMC pays to the state of Maryland will be less than the franchise tax paid to the state of Delaware.

8. CMC anticipates submitting the Conversion and the CMC merger to its stockholders for approval at a special stockholder meeting to be held at a future date. Prior to the special stockholder meeting, CMC will distribute proxy materials to its stockholders setting forth the material terms of the transactions comprising the Conversion and the CMC merger and other information relevant thereto.

9. After receiving approval by CMC's shareholders and the requested exemptive relief from the SEC, CMC will sell the waste water treatment plant to Heartland for its appraised fair market value. CMC will transfer to MLC, as a capital contribution, CMC's right pursuant to the Management Agreement, its Class B Interest, and any other illiquid assets presently owned by CMC. In addition, CMC will assign to MLC all of CMC's contingent liabilities. The proposed sale to Heartland, transfers to MLC, and assignment of contingent liabilities to MLC are collectively referred to herein as the "Transfer."

10. Simultaneously with the Transfer, CMC will redeem all of its outstanding preferred stock pursuant to the provisions of CMC's charter (the "Redemption"). CMC's charter provides that CMC may redeem its preferred stock at any time by resolution of CMC's board of directors. The redemption price is $100 per share, together with accrued and unpaid dividends thereon. As of June 30, 1992, there were 278,629 shares of preferred stock issued and outstanding. Following the Redemption, CMC's outstanding capital stock will consist only of common stock.

11. Following the Transfer, MLC will change its state of incorporation from Iowa to Delaware by merging into a newly-formed Delaware corporation and wholly-owned subsidiary of MLC ("New MLC") (the "MLC merger"). As a result of the MLC merger, the corporate existence of MLC will terminate and New MLC will be the surviving corporation. Immediately prior to the MLC merger, New MLC's only assets will be a nominal amount of initial stated capital, and it will have no liabilities or other obligations. As a result of the MLC merger, New MLC will possess all of the rights, privileges, powers and franchises, and all of the properties and assets of MLC, and will be subject to all of MLC's debts, liabilities, obligations and duties (including the contingent liabilities CMC assigned to MLC). All corporate acts, plans, policies, applications, agreements, orders, registrations, licenses, approvals, and authorizations of MLC effective immediately prior to the MLC merger will be binding on New MLC as the surviving corporation. In addition, New MLC will adopt and agree to be bound by MLC's registration under the Act.

12. In connection with the MLC merger, the certificate of incorporation and the by-laws of New MLC will contain several new provisions (the "anti-takeover provisions") designed to enhance the likelihood of continuity and stability in the composition of New MLC's board of directors and in the policies formulated by such directors. The anti-takeover provisions will: (a) Establish up to three classes of directors; (b) prohibit the stockholders of New MLC from taking action pursuant to a written consent; (c) authorize the creation of preferred stock at a future date; (d) prohibit the calling of special meetings of the stockholders unless such meetings are requested by the chairman or the president of New MLC or by the holders of not less than 80% of the outstanding stock; and (e) prohibit the calling of special meetings of directors unless requested by the chairman or the president of New MLC or by 75% of directors then in office.

13. Immediately following the MLC merger, CMC will distribute to the holders of its common stock, by way of a spinoff, on a *pro rata* basis, all of the shares of common stock of New MLC owned by CMC (which at the time of the distribution will constitute all of the issued and outstanding shares of New MLC common stock) at a rate of one share for each share of CMC common stock owned on the record date for the distribution (the "Spinoff"). The Spinoff will not involve any change in the beneficial ownership of MLC or New MLC.

14. Prior to the consummation of the Spinoff, applicants intend that New MLC will apply for listing of the New MLC common stock on the American Stock Exchange or for quotation on the National Association of Securities Dealers Automated Quotation System. In connection therewith, New MLC will file a registration statement pursuant to section 12(b) of the Securities Exchange Act of 1934. Following the Spinoff, CMC and New MLC will be separately owned public companies.

15. The CMC merger will occur simultaneously with or following the Conversion. Each outstanding share of CMC common stock will be converted into one share of common stock of New CMC. Immediately prior to the CMC merger, New CMC's only asset will be a nominal amount of initial stated capital and it will have no liabilities or other obligations except those incurred in connection with its organization or the CMC merger. Following the CMC merger, New CMC will possess all of the rights, privileges, powers and franchises, and all of the properties and assets of CMC, and will be subject to all of CMC's debts, liabilities, obligations, and duties.

16. Pursuant to the terms of the CMC merger, the articles of incorporation of New CMC will continue as the articles of incorporation of the surviving corporation. Certain provisions of the new articles of incorporation will be different from comparable provisions in CMC's articles of incorporation, and the rights of the shareholders of New CMC will differ in certain respects from the rights of the shareholders of CMC. These differences will result exclusively from differences in the corporate laws of

Delaware and Maryland and provisions required to enable New CMC to operate as an open-end investment company.

17. The differences between Delaware law and Maryland law are as follows: (a) Under Delaware law, CMC is required to hold annual shareholder meetings, whereas under Maryland law CMC will hold shareholder meetings only in years where the election of directors is required by the Act; (b) under Delaware law, shareholders can take action with the written consent of a majority of all shares entitled to vote, whereas Maryland law requires such action by written consent to be unanimously approved by the shareholders entitled to vote; and (c) under Delaware law, extraordinary transactions such as mergers or consolidations must be approved by the majority of the shareholders, whereas Maryland law requires a two-thirds shareholder approval of extraordinary transactions.

18. Certain changes in New CMC's articles of incorporation which are necessary so that New CMC can function as an open-end investment company could be implemented under either Delaware or Maryland law. Such changes will provide that: (a) Shares of the common stock of New CMC will be redeemable at any time at the option of the holder thereof, or at the option of New CMC, at a price equal to the net asset value of such shares; and (b) the board of directors of New CMC may classify and reclassify any unissued shares of common stock of New CMC into one or more additional or other classes or series.

Applicants' Legal Conclusions

1. Section 17(a) of the Act provides generally that it shall be unlawful for an affiliated person, or an affiliated person of an affiliated person, of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to a company controlled by such registered investment company, except for securities of which the buyer is the issuer. Section 17(a), therefore, may be deemed to prohibit the proposed Transfer in that (a) Heartland, MLC and certain stockholders of CMC are affiliates of CMC, and (b) Heartland and MLC are controlled by CMC.

2. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the general purposes of the Act and the registered investment company's general policy.

3. Section 17(d) of the Act and rule 17d–1 thereunder, in the absence of an order granted by the Commission, prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which any such registered company, or a company controlled by such registered company is a participant. Under rule 17d–1, the Commission may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act and not on a basis less advantageous than that of other participants.

4. The Conversion, consisting of the Transfer, Redemption, MLC merger, and Spinoff, and the CMC merger are fair and reasonable to applicants and CMC's shareholders because no change in the ultimate beneficial ownership of the assets will occur. Applicants will not participate in the Conversion or CMC merger on a basis different from or less advantageous than that of any other participant. Holders of CMC common stock will not receive any special right or benefit in relation to other shareholders. Moreover, CMC's shareholders will have the ability to redeem their shares at such times as they may choose at prices based on the then current net asset value of such shares as determined based on the daily valuations of the CMC assets.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29789 Filed 12–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19140; International Series Rel. No. 503; 812–8174]

IDS Bond Fund, Inc.; Application

December 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: IDS Bond Fund, Inc., IDS California Tax-Exempt Trust, IDS Certificate Company, IDS Discovery Fund, Inc., IDS Equity Plus Fund, Inc., IDS Extra Income Fund, Inc., IDS Federal Income Fund, Inc., IDS Global Series, Inc., IDS Growth Fund, Inc., IDS High Yield Tax-Exempt Fund, Inc., IDS International Fund, Inc., IDS Life Capital Resource Fund, Inc., IDS Life Managed Fund, Inc., IDS Life Moneyshare Fund, Inc., IDS Life Series Fund, Inc., IDS Life Special Income Fund, Inc., IDS Life Variable Annuity Fund A, IDS Life Variable Annuity Fund B, IDS Managed Retirement Fund, Inc., IDS Market Advantage Series, Inc., IDS Money Market Series, Inc., IDS New Dimensions Fund, Inc., IDS Precious Metals Fund, Inc., IDS Progressive Fund, Inc., IDS Selective Fund, Inc., IDS Special Tax-Exempt Series Trust, IDS Stock Fund, Inc., IDS Strategy Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS Tax-Free Money Fund, Inc., and IDS Utilities Income Fund, Inc.

RELEVANT ACT SECTION: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act and rule 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit them to acquire equity and/or convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter or investment adviser ("Foreign Securities Companies"), in accordance with the conditions of the proposed amendments to rule 12d3–1 under the Act.

FILING DATE: The application was filed on November 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Laura M. Moret, IDS Financial Corporation, IDS Tower 10, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are registered under the Act as investment companies. Applicants that are open-end investment companies are herein referred to as Funds. IDS Life Insurance Company ("IDS Life") serves as investment adviser to IDS Life Capital Resource Fund, Inc., IDS Life Managed Fund, Inc., IDS Life Moneyshare Fund, Inc., IDS Life Special Income Fund, Inc., IDS Life Series Fund, Inc., IDS Life Variable Annuity Fund A, and IDS Life Variable Annuity Fund B (the "Life Funds"). IDS Financial Corporation ("IDS Financial") serves as investment adviser to all of the other existing Funds and to IDS Certificate Company and as subadviser to the Life Funds. IDS Life and IDS Financial are registered as investment advisers under the Investment Advisers Act of 1940.

2. Applicants request that any exemptive order issued pursuant to this application also apply to any future investment company registered under the Act managed by IDS Financial or IDS Life or an affiliate of IDS Financial or IDS Life.

3. Applicants wish to further diversify their assets, consistent with their respective investment policies, by being permitted to invest in equity securities or convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, a dealer, an underwriter or an investment adviser.

4. Applicants seek conditional relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in equity and/or convertible debt securities of Foreign Securities Companies to the extent permitted in the proposed amendments to rule 12d3–1 under the Act. See Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or investment adviser. Rule 12d3–1 provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in the United States markets, the Board of Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for inclusion on its "List of Marginable OTC Stocks," securities issued by many foreign securities companies are not "foreign margin stocks," and thus are not "margin securities" under Regulation T. See 12 CFR 220.2(i) and (q)(6). Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3–1.

3. The proposed amendments to rule 12d3–1 provide that the "margin security" requirement would be excused if the acquiring company purchases equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–29791 Filed 12–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19142; 812–8138]

Morgan Stanley Fund Inc., et al.; Notice of Application

December 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Morgan Stanley Fund, Inc., (currently consisting of the following portfolios: Morgan Stanley Global Fixed Income Fund, Morgan Stanley Global Equity Allocation Fund, and Morgan Stanley Money Market Fund), any other existing or future portfolio of Morgan Stanley Fund, Inc., and any other open-end investment company registered under the Act whose principal underwriter is the Distributor or an affiliate of the Distributor and whose shares are divided into two or more classes with differing voting rights and expense allocations and/or that employs a contingent deferred sales charge ("CDSC") in a manner substantially similar to that described in this application (the "Funds"); Morgan Stanley Asset Management Inc. (the "Manager"), and Morgan Stanley & Co. Incorporated (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to (a) issue multiple classes of shares representing interests in the same portfolio of securities, and (b) assess a CDSC on certain redemptions of shares of the Funds and waive the CDSC in certain cases.

FILING DATE: The application was filed on October 29, 1992 and amended on November 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1992 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

A. The Variable Pricing System

1. Each of the Funds is an open-end management investment company registered under the Act. Each Fund will enter into an investment advisory agreement with the Manager pursuant to which the Manager will provide investment advisory services to the Funds. Each Fund will also enter into a distribution agreement with the Distributor pursuant to which the Distributor will act as the principal underwriter for the Funds.[1] Shares of the Morgan Stanley Money Market Fund (the "Money Fund") will be offered and sold to investors at net asset value without a sales charge.

2. It is anticipated that each of the Funds will adopt a distribution plan pursuant to rule 12b-1 under the Act (the "Rule 12b-1 Plans") which provide for payments to the Distributor at annual rates of as much as 0.25% of the net assets of each of the Funds. In the future, shares of the Funds may be offered and sold in two or more classes of shares for each such Fund, shares of additional portfolio funds having one or mores classes of shares may be offered and sold to investors and such classes may have different combinations of front-end sales loads and contingent deferred sales charges ("CDSCs") in addition to rule 12b-1 distribution charges, as discussed below. It is anticipated that one or more of such additional classes and portfolio funds will adopt Rule 12b-1 Plans. Such Rule 12b-1 Plans may provide for payments to the Distributor at annual rates of as much as 1.00% of each Funds's net assets, although by action of the directors of such Funds, such payments may be limited to a lesser percentage of the Fund's net assets.

3. Applicants propose to establish a multiple distribution arrangement (the "Variable Pricing System"). Under the Variable Pricing System, each Fund would have the opportunity to provide investors with the option of purchasing shares subject to a CDSC and a higher distribution fee ("Class B shares" or the "Deferred Option") in addition to the shares with a conventional front-end sales load (and a CDSC for purchases over $1,000,000) that are subject to a distribution fee ("Class A shares" or the "Modified Front-End Load Option"), as initially offered and sold by Morgan Stanley Global Fixed Income Fund and Morgan Stanley Global Equity Allocation Fund (the "Non-Money Funds"). In addition, under the Variable Pricing System, applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the Class A shares and Class B shares as described below.

4. Under the Modified Front-End Load Option, investors may purchase Class A shares of the Non-Money Funds at net asset value with an initial, "front-end" sales load that is graduated from 4.75% down to 2.00% for purchases in amounts up to $999,999. For purchases of Class A shares of the Non-Money Funds in amounts of $1 million or more, no front-end sales load will be imposed, but a CDSC of 1.00% of the net asset value of the shares redeemed will be imposed for redemptions of Class A shares of the Non-Money Funds that are made within one year to purchase. The sales loads will be at rates competitive in the industry and generally will be subject to reductions for larger purchases and under a right of accumulation or other discount purchase plans. The sales loads will be subject to certain other reductions permitted by section 22(d) of the Act and rule 22d-1 thereunder and set forth in the registration statement of each Fund. In addition, Class A shareholders of the Funds will bear the cost of an ongoing distribution fee under a Rule 12b-1 Plan based upon a percentage of the average daily net asset value of the Class A shares. The rate of such fee currently is not expected to exceed 0.25% of each Fund's net assets.[2]

5. Under the Deferred Option, investors will purchase Class B shares at the net asset value per share without the imposition of a sales load at the time of purchase. The Funds also will pay a distribution fee, based upon the average daily net asset value of the Class B shares, which will compensate the Distributor for its services and expenses in distributing each Fund's shares, including payments made to brokers, dealers, and certain financial institutions as commissions or service fees.[3] It is currently expected that such distribution fee will not exceed 1.00% of each Fund's net assets. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of purchase of such shares may be subject to a CDSC, which is paid to the Distributor. It is currently expected that the percentage generally will be 1.00% for redemptions made during the first year after initial purchase. Such percentages, however, could vary, for example from 5% for redemptions made during the first year from initial purchase to 1% for redemptions made during the sixth year from purchase. Other schedules with different initial percentages and different periods over which the CDSC is charged may also apply. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also will be Class B shares, although such shares will not be subject to the CDSC.

6. From time to time the Funds may create additional classes of shares, the terms of which may differ from the Class A and Class B shares only in the following respects: (i) Any such class may bear different service and distribution fees (and any other costs relating to obtaining shareholder approval of the Rule 12b-1 Plan for such class, or an amendment to such Plan), (ii) any such class may bear different shareholder servicing fees,[4] (iii) any such class may bear different designations, (iv) any such class will have exclusive voting rights with respect to any Rule 12b-1 Plan adopted exclusively with respect to such class, and (v) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant

[1] The Manager also provides investment advisory services to Morgan Stanley Institutional Fund, Inc. ("MSIF") and the PCS Cash Fund, Inc ("PCS"), which are no-load, open-end management investment companies registered under the Act. The Distributor acts as the principal underwriter for MSIF and PCS. Neither MSIF nor PCS has any present plans to take advantage of any relief granted pursuant to this application, but such relief would apply to MSIF or PCS.

[2] The Rule 12b-1 Plans for the Class A shares may permit an increase in payments to the Distributor to a maximum of 0.35% of each Fund's average net assets without shareholder approval.

[3] As used in this application, the term "service fee" has the meaning given to that term in the amendment to Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD") *See* Exchange Act Release No. 30897 (July 7, 1992) 57 FR 30,985 (1992).

[4] As used in this application, the term "shareholder servicing fees" means fees paid to the Funds' shareholder servicing agent and others who perform transfer agency, account maintenance or dividend disbursing functions or who administer dividend reinvestment or systematic investment plans.

to an amended order. Shares of different classes also may be sold under different sales arrangements (including, for example, sales with a front-end sales charge, subject to a contingent deferred sales charge, or at net asset value) and may have different exchange privileges.

7. Applicants will structure the distribution arrangements for each and all of the classes described above with respect to the distribution charges and service fees, including the charges under the Rule 12b–1 Plans, to comply with the amounts permitted under applicable current regulations of the NASD, and as those regulations may be further amended from time to time.

8. Under the Variable Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's Rule 12b–1 Plan (if any), including any costs associated with obtaining shareholder approval of such Plan (or an amendment to such Plan), any incremental shareholder servicing fees attributable to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class. Because of the higher distribution fee, potentially higher shareholder servicing fee, and any other expenses that may be attributable to the Class B shares, the net income attributable to and the dividends payable on Class B shares would be lower than the net income attributable to and the dividends payable on Class A shares. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class.

9. The Distributor will furnish the directors of each Fund with quarterly reports detailing amounts expended by the Distributor (for such quarter and on a cumulative basis) as distribution expenses ("Statements") to enable the directors to fulfill their responsibilities pursuant to paragraph (d) of rule 12b–1 and to make the findings required by paragraphs (e) of rule 12b–1.

10. Class B shares of a Fund will be exchangeable only for Class B shares of the other Funds, including Class B shares of money market funds. Class A shares of a Non-Money Fund generally will be exchangeable at net asset value for Class A shares of the other funds. Class A shares of the Money Fund will be exchangeable for Class A shares of a Non-Money Fund at net asset value plus the front-end sales load for the Non-Money Fund. Class A shares of a Fund will be exchangeable only for Class A shares of the other Funds, including Class A shares of money market funds, and for shares of other Morgan Stanley Funds that do not participate in the Variable Pricing System. The exchange privileges will comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares of the Funds and to waive the CDSC for certain types of redemptions. The amount of the CDSC charged will vary, depending on the length of time shares have been held.

2. The CDSC will not be imposed on redemptions of shares purchased more than a fixed number of years prior to the redemptions (the "CDSC Period") or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed to the lowest possible rate.

3. The amount of any CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

4. The Funds will waive or reduce the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder, (b) on any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½, and (c) on any redemption which results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code or from the death or disability of the employee. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified. Also, in waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act as if such CDSC were a sales load.

5. If the directors of a Fund that has been waiving or reducing its CDSC pursuant to either of the items set forth above determine not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Also, any shares purchased prior to the termination of such waiver or reduction would have the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

A. The Variable Pricing System

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent that the Variable Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent that the allocation of voting rights under the Variable Pricing System may violate the provisions of section 18(i).

2. Applicants believe that the Variable Pricing System does not raise any of the concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowing and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds since all such shares will participate *pro rata* in all of a Fund's appreciation, income and expenses with the exception of the differing distribution fees associated with the various Rule 12b–1 Plans, any incremental shareholder servicing costs payable by a particular class and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order.

3. Applicants believe that the Variable Pricing System will both facilitate the distribution of shares by a Fund and provide investors with a broader choice as to the method of purchasing shares. In addition, applicants believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater

number of shares than they would be otherwise.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the Rule 12b–1 Plans in the manner described above is equitable and will not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and, in any event, the interests of the shareholders with respect to distribution fees will be adequately protected since the Rule 12b–1 Plans for each class will conform to the requirements of rule 12b–1, including the requirement that their implementation and continuance be approved on an annual basis by the directors of the Funds.

5. Since each class of shares will be redeemable at all times (subject to the same limitations set forth in each Fund's prospectus and statement of additional information), since no class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have any distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account), and since the similarities and dissimilarities of the classes of shares will be disclosed when required in the Funds' prospectuses and statements of additional information, investors will not be given misleading impressions as to the safety or risk of any class of shares and the nature of each class of shares will not be rendered speculative.

B. The CDSC

1. Applicants believe their request for exemptive relief is consistent with the standards of section 6(c) of the Act. Applicants believe that the imposition of the CDSC is fair and in the best interest of their shareholders. The Variable Pricing System permits shareholders to have the advantage of greater investment dollars working for them from the time for their purchase than if a shales load were imposed at the time of purchase, as is the case with the Class A shares. Furthermore, the CDSC is fair to shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of distributions.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Variable Pricing System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The impact of different Rule 12b–1 Plan payments made by a particular class of shares (and any other costs relating to the implementation of such Plan) which will be borne solely by shareholders of such class, any incremental shareholder servicing costs attributable solely to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12–1 Plans, (c) different exchange privileges, and (d) the designation of each class of shares of a Fund.

2. The directors of each of the Funds, including a majority of the independent directors, shall have approved the Variable Pricing System prior to the implementation of the Variable Pricing System by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for determining that the proposed Variable Pricing System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sales of a specific class of shares will not be presented to the directors to support rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties under rule 12b–1.

5. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that costs and distribution fees associated with any Rule 12b–1 Plan relating to a particular class will be borne exclusively by such class and except that any higher incremental shareholder servicing costs attributable solely to a particular class and any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the various classes have been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to applicants (which has been provided to the staff of the SEC) stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make,

will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (6) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (6) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

9. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the directors.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will separately present each class of shares.

12. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b-1 Plans in reliance on the exemptive order.

B. Condition Relating to the CDSC

1. Applicants will comply with the provisions of proposed rule 6c-10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29841 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19143; File No. 812-8122]

New York Life Insurance and Annuity Corporation, et al.; Notice of Application

December 2, 1992.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: New York Life Insurance and Annuity Corporation ("NYLIAC"), New York Life Insurance and Annuity Corporation Variable Annuity Separate Account-I ("VA Separate Account I"), New York Life Insurance and Annuity Corporation Variable Annuity Separate Account-II ("VA Separate Account II") and NYLIFE Securities Inc. ("NYLIFE").

REVEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit NYLIAC to deduct from the assets of the Separate Accounts a mortality and expense risk charge under certain flexible premium variable annuity policies ("Policies").

FILING DATE: The application was filed on October 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o New York Life Insurance and Annuity Company, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Kathleen Ujvari, Accountant, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC is a stock life insurance company incorporated under the laws of Delaware in 1980. NYLIAC is wholly-owned by New York Life Insurance Company, a mutual life insurance company founded in 1845 with total

assets of $42.7 billion as of December 31, 1991. NYLIAC is principally engaged in offering life insurance and annuities and is admitted to do business in all 50 states and the District of Columbia.

2. The Separate Accounts are registered under the 1940 Act as unit investment trusts. The Separate Accounts have five investment divisions ("Investment Division(s)"), each of which invests solely in a corresponding portfolio ("Portfolio(s)") of New York Life MFA Series Fund, Inc. (the "Fund"). The Fund is incorporated in Maryland and is a diversified, open-end management investment company registered under the 1940 Act. The Fund consists of several Portfolios, each of which pursues different investment objectives and policies. The shares of each Portfolio are purchased by NYLIAC for the corresponding Investment Division at net asset value, i.e., without sales load.

3. The Policies provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Fixed Account. Annuity payments will be on a fixed basis. An Owner directs the allocation of premium payments and accumulation value among the Investment Divisions of the Separate Accounts and the Fixed Account.

4. The VA Separate Account II Policies are currently intended to be used in connection with retirement plans qualified under sections 401(a), 403(a), 403(b), 408 or 457 of the Internal Revenue Code (the "Code"). The VA Separate Account I Policies are not designed to qualify for favored tax treatment under the Code.

5. NYLIFE Securities Inc. ("NYLIFE"), the principal underwriter of the Policies, is an indirect wholly-owned subsidiary of New York Life. NYLIFE is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

6. The Policies have no front-end sales load deducted from premium payments. Surrenders in the first three Policy years are subject to a contingent deferred sales load of 7% of the amounts withdrawn or surrendered. The applicable contingent deferred sales load decreases by 1% per year until after the ninth Policy year when there is no contingent deferred sales load. Up to 10% of the Policy's accumulation value on the surrender date can be withdrawn in any Policy year without charge. The total contingent deferred sales loads assessed will not exceed 8.5% of the premium payments under the Policy. Applicants are relying on Rule 6c–8 under the Act to deduct the contingent deferred sales load.

7. NYLIAC may make a deduction for premium taxes imposed by state law, either (i) when a surrender or cancellation occurs, or (ii) at the annuity commencement date. Currently, these taxes range up to 3.5%.

8. Policy owners may make unlimited exchanges among the Portfolios. No fee is imposed for a Policy owner's first twelve exchanges per Policy year; after that a $30 fee per exchange may be imposed. This charge is paid to NYLIAC to compensate it for the anticipated actual use of administrative expenses related to exchanges.

9. During the accumulation period, the Policies are also subject to an annual policy fee of the lesser of $30 or 2% of the accumulation value at the end of the Policy year. This fee will be deducted on each Policy anniversary or upon surrender of the Policy, if the accumulation value of the Policy is less than $10,000. All Policies are subject to a daily charge equal, on an annual basis, to .10% of the net asset value of the Separate Accounts to cover policy administration expenses. These daily and annual fees will not exceed the cost of services to be provided over the life of the Policy defined in accordance with the applicable standards in Rule 26a–1 under the 1940 Act.

10. NYLIAC imposes a charge as compensation for bearing certain mortality and expense risks under the Policies. The mortality and expense risk charge is assessed daily in an amount equal, on an annual basis, to 1.20% of the assets in each Investment Division of the Separate Accounts (of which .70% is attributable to mortality risks and .50% is attributable to expense risks).

11. The mortality risk borne by NYLIAC under the Policies arises from its obligation to make annuity payments, determined in accordance with the annuity tables and other provisions contained in the Policy, where the Life Fixed Income Payment Option is selected regardless of how long an Annuitant may live. The mortality risk is the risk that upon selection of an annuity payment option with a life contingency, annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected annuity payments. NYLIAC is also assuming mortality risk as a result of its promise to pay a minimum death benefit under the Policies. The expense risk borne by NYLIAC under the Policies is the risk that the charges for administrative expenses which are guaranteed for the life of the Policies may be insufficient to cover the actual costs of issuing and administering the Policies.

Applicants Legal Analysis

1. Applicants are requesting relief from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian. The proceeds are to be held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that they have reviewed publicly available information regarding the aggregate level of mortality and expense risk charges under variable annuity contracts comparable to the Policies currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Policies will be offered. Based upon the foregoing, Applicants further represent that the mortality and expense risk charges under the Policies are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

3. If the charges deducted are insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on NYLIAC; conversely, if the charges prove more than sufficient, the excess will be added to NYLIAC's surplus and will be used for any lawful purpose including any shortfalls in the costs of distributing the Policies.

4. Applicants do not believe that the contingent deferred sales load imposed under the Policies will necessarily cover the expected costs of distributing the Policies. Any "shortfall" will be made up from the General Account assets which will include amounts derived from the mortality and expense risk charge. NYLIAC has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the

Policies will benefit the Separate Accounts and the Owners. NYLIAC will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

5. Applicants further represent that the Separate Accounts will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such funds, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants believe that the requested exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Policy meets the applicable statutory standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act. Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29790 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19144; 812-8008]

Transamerica Occidental Life Insurance Co., et al.

December 2, 1992.

AGENCY: Securities and Exchange Commission (The "SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Transamerica Occidental Life Insurance Company ("Company"), Transamerica Separate Account VA-2L (the "Variable Account"), Transamerica Financial Resources, Inc. ("TFR") and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain multi-funded deferred group annuity contracts (the "Contracts").

FILING DATE: The application was filed on July 29, 1992. An amendment, the substance of which is contained herein, will be filed during the notice period to clarify certain statements made in the application.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 28, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Transamerica Applicants, c/o James W. Dederer, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive, Los Angeles, CA 90015. Dreyfus Service Corporation, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated under the laws of California in 1906. It is a wholly-owned subsidiary of Transamerica Insurance Corporation of California, which is in turn a wholly-owned subsidiary of Transamerica Corporation.

2. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is divided into sub-accounts that will invest in shares of the Dreyfus Life and Annuity Index Fund, Inc. or one or more of the portfolios of the Dreyfus Variable Investment Fund. In addition, other portfolios or funds managed or distributed by Dreyfus or an affiliate may be made available.

3. Dreyfus and TFR will serve as the distributors and principal underwriters of the Contracts.

4. The Contracts are multi-funded deferred group annuity contracts which can be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable tax treatment under section 408(b) of the Internal Revenue Code of 1986. Each participant will receive a certificate evidencing such participant's coverage under the Contract ("Certificate Owner").[1] The initial purchase payment for a certificate is $5,000 and additional payments of at least $500 may be made at any time before the annuity date. Initially, payments may be allocated to one or more sub-accounts of the Variable Account. The Company anticipates that, in the future, payments may be allocated to the sub-accounts of the Variable Account, one or more Guarantee Periods of the Fixed Account (if and when made available), or to a combination of these investment accounts.[2] Amounts allocated to the Fixed Account will be subject to a market value adjustment under certain circumstances.

5. The Contract offers a death benefit. Prior to the annuity date, the death benefit proceeds for each certificate are equal to the greatest of (a) the Certificate Owner's account value (plus or minus any market value adjustment applicable to the Fixed Account), (b) the sum of all purchase payments less withdrawals and any premium taxes or, (c) the Certificate Owner's account value after any market value adjustment on the most recent seven year certificate anniversary preceding the date of death adjusted for any payments and withdrawals since that seven year anniversary.

6. Subject to certain restrictions, Certificate Owners may transfer all or part of their interest in a sub-account to another sub-account of the Variable Account or to the Fixed Account (if and when available). During the accumulation phase of the Contracts, transfers in excess of six per year may be subject to a transfer fee equal to the lesser of 2% of the amount transferred

[1] The amendment that will be filed during the notice period will substitute the term Certificate Owner where the term Contract Owner was used in the application.

[2] For additional information concerning the Applicants and the contracts, see Registration Nos. 33-49998 for the Variable Account and 33-50006 for the Fixed Account, both of which are incorporated by reference into the application.

or $10. Currently, there is no transfer charge. After annuity payments begin, if a variable annuity is selected, the Certificate Owner may make four transfers among sub-accounts per Contract year. No transfer fee applies after the annuity date.

7. The Company will deduct an annual account fee for each certificate equal to the lesser of (a) 2% of a Certificate Owner's account value or (b) $30. The fee may be increased but is guaranteed not to exceed the lesser of 2% of the account value or $60. After the annuity date an annual fee of $30 will be deducted in equal installments from each annuity payment.

8. The Company will also deduct a daily administrative charge from the assets of each sub-account of the Variable Account currently at an effective annual rate of 0.15% of the average net assets of the Variable Account. This charge may be increased but will not exceed 0.25%.

9. The Company reserves the right to impose an annual fee not to exceed $25 for administrative expenses associated with processing monthly withdrawals under a certificate pursuant to a systematic withdrawal option offered under the Contract.

10. Applicants represent that the Company does not anticipate any profit from the charges described in paragraphs 5–9 above and that the Company will deduct the administrative charges in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

11. A contingent deferred sales charge of up to 6% of the amount withdrawn will be imposed on certain partial withdrawals from or surrender of a Certificate Owner's account. The percentage of the charge varies according to the number of certificate years between the certificate year in which a payment was credited to the certificate and the certificate year in which the withdrawal is made.[3] The charge is equal to 6% until the second certificate year after receipt of payment has been completed, 5% until 4 years are completed, 4% for the next two years, 2% after 6 complete years and 0% after 7 complete years. The amount of any withdrawal will be deemed to come first from purchase payments on a first in/ first out basis until all purchase payments have been withdrawn. The Company guarantees that the aggregate contingent deferred sales charge will never exceed 6% of the total purchase payments. After the second certificate year, up to 10% of purchase payments held less than seven certificate years may be withdrawn without a charge. Also, the contingent deferred sales charge will not be applied to death benefits, withdrawals under the Contract's systematic withdrawal or automatic payment options, and upon certain annuities.

12. Premium taxes relating to a particular certificate will be deducted from premiums, upon receipt of purchase payments, withdrawal, surrender, payment of death benefits, or annuitization. No charges are currently made for federal, state, or local taxes other than premium taxes. However, the Company may deduct such taxes from the Fixed Account and the Variable Account in the future. The Applicants acknowledge that the relief granted by Rule 26a–2 under the Act does not apply to taxes other than premium taxes.

13. The Company will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Variable Account and the Contracts. The charge is set at an annual maximum rate of 1.25% of the net assets in the Variable Account. Of that amount, approximately 0.65% is estimated to be attributable to mortality risks, and approximately 0.60% is estimated to be attributable to expense risks. The Company currently anticipates a profit from this charge. The mortality risk borne by the Company arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. The Company also assumes a risk in connection with the payment of death benefits. The expense risk assumed by the Company is the risk that actual administrative costs will exceed the amount recovered through the various administrative charges described above.

Applicants' Legal Analysis and Conditions

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charge under the Contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge under the certificates is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Company also represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other Contract options. The Company will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

3. Applicants acknowledge that the proceeds from the contingent deferred sales load may be insufficient to cover all costs relating to the distribution of the contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Certificate Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

4. Applicants represent that the Variable Account will invest only in underlying management investment companies which undertake, in the event such company adopts any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested

[3] A certificate year is the 12-month period from the certificate date and ending with the day before the certificate anniversary and each 12-month period thereafter. The first certificate year for any particular purchase payment is the certificate year in which the purchase payment is received by the Company.

persons of the company, formulate and approve any such plan under Rule 12b-1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-29840 Filed 12-8-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBIC Financial Reports.

SBA Form No.: SBA Form 468.1, 468.2, 468.3, 468.4.

Frequency: Annual.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 349.

Burden: 5,933.

Dated: December 3, 1992.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 92-29779 Filed 12-8-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7624.

This notice is published pursuant to paragraphs (c), (e), and (g) and section 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 3, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27017.
Petitioner: GE Aircraft Engine.
Sections of the FAR Affected: 14 CFR 21.165(b).
Description of Relief Sought: To allow GE Aircraft Engine to overhaul 32 CFM56-5C2 certification flight test engines (serial numbers 740-101 through 740-132) using overhaul limits rather than new evaluation limits.

Dispositions of Petitions

Docket No.: 23647.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/Disposition: To extend the termination date of Exemption No. 3859, which allows Embry-Riddle Aeronautical University (ERAU) to recommend graduates of its Certified Flight Instructor courses for certification without taking the Federal Aviation Administration flight tests. In addition, relief is sought to amend Exemption No. 3859 to allow ERAU an exemption from the flight instructor written test portion of § 141.65.
Grant, November 25, 1992, Exemption No. 3859G.

Docket No.: 26835.
Petitioner: Dynair Tech of Texas, Inc.
Sections of the FAR Affected: 14 CFR 145.35(c).
Description of Relief Sought/Disposition: To permit Dynair Tech of Texas, Inc., to support the Airbus A300 series aircraft in a permanent hangar that will enclose all of an A300 aircraft except the empennage.
Denial, November 3, 1992, Exemption No. 5558.

Docket No.: 26845.
Petitioner: Airman Flight School, Inc.
Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/Disposition: To allow Airman Flight School, Inc., to recommend graduates of its approved certification courses for flight instructor and airline transport pilot certificates and ratings without having to take the Federal Aviation Administration's written or practical tests.

Partial Grant, November 27, 1992, Exemption No. 5559.

Docket No.: 26952.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 61.3 (a) and (c), and 135.95.

Description of Relief Sought/Disposition: To permit the establishment of special procedures for Regional Airline Association's member airlines that would enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based on information contained in the operator's approved record system.

Partial Grant, November 27, 1992, Exemption No. 5560.

[FR Doc. 92-29895 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-13-M

Organizations, Functions, and Authority Delegations: Chief Counsel and Assistant Chief Counsel for Litigation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The FAA is giving notice of a new delegation of authority from the Administrator to the Chief Counsel and the Assistant Chief Counsel for Litigation regarding civil penalty actions under 14 CFR 13.16 and 14 CFR part 13, subpart G. The delegation was set forth in a memorandum signed by the Administrator on October 27, 1992. The FAA is publishing the text of the delegation so that it is available to interested parties. This delegation is somewhat broader than, and supercedes, a previous delegation of authority by the Administrator by memorandum signed on January 29, 1990, and published in the **Federal Register** on April 20, 1990. 55 FR 15094; April 20, 1990.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue, NW., suite 925, Washington, DC 20004; telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: By memorandum signed on January 29, 1990, the Administrator delegated certain limited authority of the FAA decisionmaker to the Chief Counsel and the Assistant Chief Counsel for Litigation in actions brought under the FAA's Civil Penalty Demonstration Program. The text of the delegation was printed in the **Federal Register** on April 20, 1990. 55 FR 15094; April 20, 1990.

In light of the enactment of the FAA Civil Penalty Administrative Assessment Act of 1992, Public Law 102-345, 106 Stat. 923, the Administrator has issued a new memorandum delegating limited authority as FAA decisionmaker to the Chief Counsel and the Assistant Chief Counsel for Litigation. The new delegation supersedes the previous delegation, and is applicable in all civil penalty actions under 14 CFR 13.16 and part 13, subpart G.

Based upon the Administrator's decisionmaking experience since January 20, 1990, the Administrator in the October 29, 1992, memorandum delegated somewhat broader authority to the Chief Counsel and Assistant Chief Counsel for Litigation. As with the earlier delegation, the new delegation is designed to eliminate the need for the Administrator to review and consider minor, procedural or unopposed matters.

The text of the delegation of authority signed by the Administrator, in pertinent part, is as follows: Under 49 U.S.C. 322(b) and 14 CFR 13.202, I delegate to the Chief Counsel and the Assistant Chief Counsel for Litigation the authority of the FAA decisionmaker in all civil penalty actions under 14 CFR 13.16 and 14 CFR part 13, subpart G, as follows:

a. To grant or deny extensions of time to file briefs, petitions for reconsideration, motions, and replies to petitions for reconsideration and motions; to grant or deny requests to file additional briefs; and to approve or disapprove other deviations from, or requests for changes in, procedural requirements;

b. To correct typographical, grammatical and similar errors in the FAA decisionmaker's orders, and to make editorial changes in those orders that do not involved substantive matters;

c. To issue orders dismissing appeals from initial decisions upon request of the appellant or due to the withdrawal of the complaint; to grant or deny motions to dismiss appeals from initial decisions, or to issue orders *sua sponte*. for failure to file a timely appeal or failure to perfect an appeal;

d. To say the effectiveness of decisions and orders pending reconsideration by the FAA decisionmaker;

e. To issue orders staying, pending judicial review, orders of the FAA decisionmaker, and to consent to the entry of judicial stays regarding such orders;

f. To dismiss summarily petitions to reconsider or modify that are repetitious or frivolous;

g. To issue orders construing notices of appeal or other documents that meet the requirements for appeal briefs as appeal briefs, and to set a date for the filing of a reply brief.

The Chief Counsel or the Assistant Chief Counsel for Litigation may redelegate the authority set forth above to the Manager, Adjudications Branch.

Issued in Washington, DC. on December 3, 1992.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 92-29896 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Contra Costa County and Solano County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Contra Costa County and Solano County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Schultz, Chief, District Operations-A, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) for a proposal to construct a new bridge across Carquinez Strait at Interstate 80 in the community of Crockett and the City of Vallejo to replace the existing West Carquinez Bridge and relieve existing freeway congestion and accommodate projected traffic volumes. The EIR/EIS will evaluate a new bridge and its approaches. The project limits will include I-80 between State Route 4 in Contra Costa County and Interstate 780 in Solano County. The scope of the traffic study will include I-80 from State Route 4 to Interstate 680. Modifications to adjacent interchanges

may be required, and will be considered in the preliminary engineering and environmental studies.

In addition, to the above, alternatives under consideration include (1) taking no action, (2) upgrading the existing facility, (3) providing for mass transit and (4) providing for multi-modal transportation modes including bicycle and pedestrian facilities. Incorporated into the studies with the various build alternatives will be design variations of grade and alignment.

The scoping process includes the distribution of the Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the notice of intent in the **Federal Register**, and a scoping meeting to be held on December 17, 1992. This scoping meeting will be advertised in advance in local newspapers.

Public meetings will also be held during the course of the environmental studies to inform and receive input from the public. A Draft Environmental Impact Statement will be circulated for public and agency review and comment followed by a public hearing. Public notice will be given regarding the time and place of the meeting and hearing.

To ensure that the full range of issues related to the proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 2, 1992.

Mr. John Schultz,

Chief, District Operations-A, Sacramento, California.

[FR Doc. 92-29859 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Missoula and Lake Counties, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the environmental impact statement being prepared for a proposed highway project in Missoula and Lake Counties, Montana has been expanded to include a study of various transportation options in the Polson area.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental Coordinator, Federal Highway Administration, 301 South Park, Drawer 10056, Helena, MT 59626-0056; Telephone: (406) 449-5310; or Edrie L. Vinson, Chief, Environmental and Hazardous Waste Bureau, Montana Department of Transportation, 2701 Prospect Street, Helena, MT 59620; Telephone: (406) 444-7632.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Transportation is preparing an Environmental Impact Statement (EIS) on a proposal to develop the US Highway 93 transportation corridor for Interstate Highway 90 near Missoula, Montana to the City of Polson in Lake County, Montana. During the scoping process it was determined that the EIS should include a study of transportation alternatives in the Polson area. Studies are also being completed in Ronan, Arlee, and Pablo areas as a part of the EIS. Public notice will be given of the time and place of the scoping meetings and public hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 30, 1992.

Hank D. Honeywell,

Division Administrator, Montana Division, Helena.

[FR Doc. 92-29781 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

[Number: 19-06]

Directive; Delegation to the Director, Bureau of Engraving and Printing, for the Redemption and Destruction of Unfit Currency and the Destruction of Waste and Spoiled Items

Dated: December 2, 1992.

1. *Delegation.* The authority and responsibility delegated to the Treasurer of the United States by Treasury Order (TO) 135-01, "Delegation of Authority and Responsibility for Destruction of Security Items," dated November 7, 1988, for the redemption and destruction of unfit currency and the destruction of waste and spoiled items produced in printing currency, securities, postage stamps, food stamps and the like, worn out or obsolete plates, dies, and similar items and materials are hereby delegated to the Director, Bureau of Engraving and Printing (BEP).

2. *Redelegation.* The Director, BEP, may redelegate the authority and responsibility delegated to that official herein to Associate or Assistant Directors of BEP, who may redelegate such authority and responsibility to their subordinates, as appropriate. All redelegations shall be in writing.

3. *Procedures.* a. Procedures relating to the exchange of mutilated currency are set out in chapter 1, part 100, subpart B of title 31, CFR, and shall be observed.

b. To the extent they are not inconsistent with this directive, the "Regulations for the Destruction of Security Items" issued in November 1975 by the then Assistant Secretary for Enforcement and Tariff Affairs shall apply and remain in force until the Director, BEP, pursuant to this delegation, adopts new destruction procedures, following review and approval by the Treasurer and by the Assistant Secretary (Enforcement) for security concerns as set forth in TO 135-01. The Director, BEP, is further authorized to modify and adapt the existing procedures to accommodate any redelegations that may occur.

4. *Office of Primary Interest.* Office of the Treasurer of the United States.

Kate Todd Beach,

Acting Treasurer of the United States.

[FR Doc. 92-29882 Filed 12-8-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the

following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 30, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. REPS Eligibility Report, VA Form 21-8941,

2. The form is used to verify a REPS (Restored Entitlement Program for Survivors) beneficiary's entitlement factors such as earnings, marital status, and status of children. The information collected is used to determine whether the beneficiary is entitled to continued REPS payments.

3. Individuals or households.

4. 550 hours.

5. 15 minutes.

6. Annually.

7. 2,200 respondents.

Reinstatement

1. Statement of Dependency of Parents, VA Form 21-509.

2. The form is used to gather the necessary information to determine the dependency of a parent. Without this information, determination of entitlement would not be possible.

3. Individuals or households.

4. 20,000 hours.

5. 30 minutes.

6. On occasion.

7. 40,000 respondents.

[FR Doc. 92-29795 Filed 12-8-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 30, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, VA Form 10-5345.

2. The form is used to obtain consent of patients to release treatment information pertaining to alcohol or drug abuse, sickle cell anemia, and infection with human immunodeficiency virus (HIV).

3. Individuals or households.

4. 8,069 hours.

5. 1½ minutes.

6. On occasion.

7. 215,170 respondents.

[FR Doc. 92-29796 Filed 12-8-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 237
Wednesday, December 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 522b(e)(3)) the Farm Credit Administration gave notice on November 12, 1992 (57 FR 53814) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for November 12, 1992. This notice is to amend the agenda for that meeting to add an item to the closed session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for November 12, 1992, is amended to add the following item to the closed session:

Closed Session*

B. New Business.

2. FCA FY 1994 Budget Submission.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(2), (8) and (9).

Dated: December 7, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–30073 Filed 12–7–92; 3:15 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

FARM CREDIT ADMINISTRATION BOARD; REGULAR MEETING

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 10, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703), 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Application Procedures for Awarding of Costs in Administrative Proceeding (Final).

b. Disclosure to Shareholders (Proposed).

Closed Session*

A. New Business

1. Enforcement Actions

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: December 7, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–30074 Filed 12–7–92; 3:15 pm]

BILLING CODE 6705–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 10, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Clifford Meek v. Essroc Corporation,* Docket No. LAKE 90–132–DM (Issues include whether the judge erred in concluding that Essroc discriminated against Meek in violation of 30 U.S.C. § 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: December 3, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92–30085 Filed 12–7–92; 3:36 pm]

BILLING CODE 6735–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, December 18, 1992.

PLACE: Eight Floor, 1120 Vermont Avenue, NW., Washington, DC. 20419.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: December 7, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–30030 Filed 12–7–92; 2:09 pm]

BILLING CODE 7400–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, December 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC. 20456.

STATUS: Open.

BOARD BRIEFING:

1. Central Liquidity Facility Report and Report on CLF Lending Rate.
2. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Community Development Revolving Loan Program for Credit Unions—Notice regarding Applications for Participation.
3. Final Amendment: Part 702, NCUA's Rules and Regulations, Reserves.
4. National Credit Union Share Insurance Fund Premium for 1993.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, December 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Charter Expansion Application. Closed pursuant to exemptions (8) and (9)(B).

3. Central Liquidity Facility Line of Credit. Closed pursuant to exemptions (4) and (9)(A)(ii).

4. Request from Corporate Federal Credit Union for Waiver under Section 704.2, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

5. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (6), (7), (8), (9)(A)(ii), and (9)(B).

6. Personnel Actions. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-30029 Filed 12-7-92; 2:08 pm]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 7, 14, 21, and 28, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 7

Monday, December 7

9:30 a.m.
Briefing on License Renewal Rulemaking Issues (Public Meeting)
(Contact: Dennis Crutchfield, 301-504-1199)

Tuesday, December 8

9:30 a.m.
Briefing on License Renewal Regulatory Guidance Issues (Public Meeting)
(Contact: Dennis Crutchfield, 301-504-1199)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Exclusion of Attorneys from Interviews Under Subpoena

Friday, December 11

1:30 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguardings (ACRS) (Public Meeting)
(Contact: Raymond Fraley, 301-492-8049)

Week of December 14—Tentative

Thursday, December 17

10:00 a.m.
Briefing on Role of AEOD in Oversight of Operating Reactors (Public Meeting)
(Contact: Edward Jordan, 301-492-4848)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)

Friday, December 18

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202-586-1462)

2:00 p.m.
Briefing on License Renewal Industry Initiatives and Resources (Public Meeting)
(Contact: Dennis Crutchfield, 301-504-1199)

Week of December 21—Tentative

Monday, December 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Status of General Atomic-Sequoyah Fuels Facility (Public Meeting)
(Contact: Richard Cunningham, 301-504-3426)

Week of December 28—Tentative

Tuesday, December 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

Dated: December 4, 1992.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 92-30000 Filed 12-7-92; 10:48 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 7, 1992.

A closed meeting will be held on Friday, December 11, 1992, at 1:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, December 11, 199 2, at 1:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272-2000.

Dated: December 4, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-30086 Filed 12-7-92; 3:56 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 237
Wednesday, December 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 92-28822 beginning on page 56319 in the issue of Friday, November 27, 1992, make the following corrections:

On page 56321, in the third column, in the table, under "Margin (percent)", in the fifth entry "11" should read "0.11" and in the eighth entry "([1])" should read "[1] 0.00".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL-1-91]

Warnock Hersey International, Inc.

Correction

In notice document 92-27885 beginning on page 54423 in the issue of Wednesday, November 18, 1992, on page 54423, in the third column, under DATES, in the third line, "November 18, 1992." should read "January 19, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1294-AA06

Obligations of Federal Contractors and Subcontractors; Employee Rights Concerning Payment of Union Dues or Fees

Correction

In rule document 92-26664 beginning on page 49588 in the issue of Monday, November 2, 1992, make the following corrections:

§ 470.3 [Corrected]

On page 49596, in the 2d column, in § 470.3(a)(1), the 1st word "Any" is corrected to read "No"; and in the third column, in paragraph (b), in the 8th line remove the comma following "interest".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92-AWP-13]

Establishment of Temporary Restricted Area R-2540; Capay, CA

Correction

In rule document 92-26546 beginning on page 49389 in the issue of Monday, November 2, 1992, make the following correction:

§ 73.25 [Corrected]

On page 49390, in the second column, under § 73.25, in restriction area R-2540 Capay, CA, in the second line, "23°45′22″" should read "38°45′22″".

BILLING CODE 1505-01-D

Federal Register

Wednesday
December 9, 1992

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 23

Participation by Disadvantaged Business Enterprise in Department Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[OST Docket 48478; Notice 92-26]

RIN 2105-AB92

Participation by Disadvantaged Business Enterprise in Department of Transportation Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would revise the Department's implementing regulations for its disadvantaged business enterprise (DBE) program. This statutory program is intended to provide contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in the Department's highway, mass transit, and airport financial assistance programs. The proposed rule would clarify regulatory provisions and revise program elements in light of the Department's experience in administering the program since 1980.

DATES: Comments should be received no later than March 9, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. 48478, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9 a.m to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation, and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation has had for twelve years a policy of assisting businesses owned and controlled by minorities and women in participating DOT financial assistance programs. Some of the Department's operating administrations had minority business programs beginning in the late 1970s.

The Department published the original 49 CFR part 23 in 1980. The regulation required goals to be set for businesses owned or controlled by members of minority groups and women (MBE/WBE). This original regulation has been amended several times. In 1981, we dropped a "conclusive presumption" provision (which said that if one bidder met an MBE goal, then it was conclusively presumed that bidders who failed to meet the goal had failed to make adequate good faith efforts, and consequently could not receive the contract) and substituted the present "good faith efforts" approach, in which a contractor may either meet the goal or demonstrate good faith efforts. In the same year, the Department expanded the definition of "Hispanic" to include persons with origins in Spain and Portugal.

In 1983, Congress enacted the first statutory disadvantaged business enterprise (DBE) provision. This provision required the Department to ensure, except as the Secretary determined otherwise, that not less than 10% of the funds authorized for the highway and transit financial assistance programs be expended with DBEs. Under the 1983 statute, members of several minority groups were presumed to be socially and economically disadvantaged; women were not. The Department amended its rule to create a DBE program for Federal Highway Administration (FHWA) and Federal Transit Administration (FTA; formerly the Urban Mass Transportation Administration) programs, Federal Aviation Administration (FAA) and Federal Railroad Administration (FRA) programs.

In 1987, Congress reauthorized and amended the statutory DBE program. In this legislation, Congress, added women to the groups presumed to be disadvantaged. In separate legislation, Congress added an identical provision applying to the FAA's airport grant program. The Department's 1987 amendments to part 23 added FAA programs to the DBE portion of the rule and established a single DBE goal, for firms owned by women and minority group members.

As a result of these changes, part 23 has become something of a patchwork. The regulation should be clarified to reflect program changes since 1980. Also, the Department has over twelve years of experience in implementing part 23, which has showed us where clarification of the Department's intent would be helpful, and where recipients and other participants in the program may have misunderstood or misinterpreted portions of the regulation.

For these reasons, the Department is proposing to revise part 23. This revision is not intended to change radically the basic structure of the program. However, this revision is intended to create a clearer regulation that deals explicitly with implementation problems in the program.

Section by Section Analysis

This portion of the preamble describes each section of the proposed revision to part 23, highlighting changes between the existing rule and the proposed revision and stating the rationale for changes the Department proposes to make.

Section 23.1 Purpose

The purpose of the part is to carry out the applicable statutes that provide the basis for the DBE program. The section refers to a separate statute concerning DBE participation in airport concessions. The section notes that the DBE program is intended to provide appropriate flexibility with respect to establishing and meeting DBE goals. This section would delete references to MBE and WBE participation and references to the statutory for the original MBE/WBE program. Given specific Congressional authorization for the DBE program, references to other statutes, (e.g., Title VI of the Civil Rights Act of 1964 and parallel provisions in DOT grant program statutes) are no longer necessary.

The Department's policy encourages the formation and growth of new and existing DBEs by providing the maximum practical opportunity to compete for and participate in DOT's financial assisted programs. The Department seeks to create an environment where eligible entrepreneurs are afforded the opportunity to realize the full economic benefits of DOT funded and assisted procurement opportunities. It will do so by providing goals not less than 10 percent of the funds authorized for DOT assisted programs and by assisting their development of DBE firms. The Department is working so that former DBE's will function as full-fledged participants in the free enterprise system, capable of gaining their fair and reasonable share of transportation business activity without the help of a DBE program.

Section 23.3 Applicability

There would be two principal changes from the current regulation. First, the section would refer to the statutory FAA program for airport concessionaires. Second, it would delete reference to programs of the Federal Railroad Administration. The FRA is the only major DOT grant agency not now covered by a DBE statute. The FRA has separate statutory authority for an MBE/WBE program and has its own implementing regulations (49 CFR part 265). FRA would continue to operate under those rules.

Section 23.5 Definitions

The NPRM proposes a number of changes to the definitions section. The definitions of affirmative action and applicant would be dropped; a definition of affiliate would be added. The definition of joint venture would be expanded for greater clarity. The definition of minority is no longer needed in the rule and would be deleted. A definition of disadvantaged business enterprise, similar to that in the existing subpart D, would be substituted for the obsolete definition of minority business enterprise. A new definition of "good faith efforts" would also be added.

A definition of "small business concern," similar to that in the existing Subpart D, is in the new definitions section. It notes that a business is not eligible, even though it meets SBA size criteria, if it exceeds the DOT statutory cap on average annual gross receipts.

This section also includes a definition of socially and economically disadvantaged individuals, taken, with minor modifications, from the existing subpart D. The modifications include references to certain countries (e.g., Thailand, Burma, Malaysia, Indonesia and Sri Lanka) not specifically included in the current definition. SBA has made persons from these countries eligible in recent years. In future, any new groups added by SBA would automatically become eligible. A definition of SBA would be also added.

We also propose including a definition of "business opportunity," which would replace the definition of "lessee" in the current rule. The definition is specific to the FTA program, and includes contracts with concessionaires and similar business opportunities arising out of an FTA-assisted program.

Some concepts used in the regulation (e.g., social and economic disadvantage, commercially useful function) are explained in some detail in the regulatory text and the appendices. For this reason, the Department does not believe it is necessary to define them in this section. However, the Department seeks comment on whether definitions of these or other terms should be added.

Section 23.7 Discrimination prohibited

This section, the wording of which is somewhat revised, would state a basic prohibition against discrimination in contracting. The statutory authorities for the DBE program do not address age, disability, religion, or other grounds on which other statutes may prohibit discrimination. Consequently, part 23 does not address these matters. However, recipients are subject to nondiscrimination requirements under other statutes (e.g., the Americans with Disabilities Act) in administering their DBE programs as they are in implementing other programs.

Section 23.9 Exemptions and interpretations

The Department's administration of the DBE program has been criticized on the ground that inconsistent regulatory interpretations and program guidance have confused recipients and contractors. A draft General Accounting Office (GAO) report makes this point with particular reference to certification issues. The Department intends to form an internal DBE Program Council as a coordination mechanism.

In any regulatory program involving several different Department of Transportation agencies, coordination and consistency in the application and interpretation of regulatory provisions are essential. The same regulatory language cannot mean one thing in the highway program, something different in the transit program, and a third thing in the airport program.

Consequently, the rule would make clear, that before any written interpretation would be viewed as valid and binding, it must be concurred in by the DBE Program Council. Each interpretation letter (or other written guidance that interprets part 23) would state that the DBE Program Council has concurred in the interpretation and that the interpretation is effective throughout the DOT DBE program. This language would ensure for example, that if the FAA interprets a part 23 provision in the context of the airport program, interested parties in the highway or transit program will know, with certainty, that the interpretation applies to them as well.

Typically, requests for exemptions to Office of the Secretary rules are processed under the provisions of 49 CFR part 5. However, it is likely that most requests for exemption from part 23 will arise from parties who typically deal directly with an operating administration. Each of the three operating administrations may consider such exemption requests and grant or deny them, again with the DBE Program Council's concurrence.

The criteria for considering exemption requests are the same as those used to make decisions on exemption requests under 49 CFR part 5. First, the request must be based on special or exceptional circumstances. It is not appropriate to grant an exemption on the basis of circumstances that are likely to be repeated or result in carving out a generally applicable exception to a rule. Relief in very particularized circumstances is the aim; for more generally applicable relief, an amendment to the rule is the proper course. Second, the exemption must be based on circumstances not contemplated as part of the rulemaking. Sometimes, a particular party will wish that a rulemaking decision had been different. However, if the Department has decided not to take a certain course in general, it is not appropriate for the Department to allow a particular party to take that course through an exemption.

Section 23.11 Reporting Requirement

This provision would require that recipients report to the concerned departmental element concerning DBE participation in their DOT assisted contracts. The reports would be quarterly, unless the administrator of a particular element determined otherwise. The Department's Office of Small and Disadvantaged Business Utilization (OSDBU) has developed a model reporting form for use in the DBE program. The Department is seeking comment at this time on whether modifications to the form should be made and whether a single DOT-wide form or different forms for the operating administrations' respective programs would work better. For the convenience of commenters the draft OSDBU form is reprinted at the end of this preamble. Recipients should contact their operating administration offices of civil rights for more information on operating administration versions of a reporting form.

Section 23.21 Assurances

Like its counterpart in the existing regulation, this provision requires that financial assistance agreements between DOT and recipients, and contracts between recipients and contractors, contain assurances of compliance with the regulation. The text of the assurances has been condensed.

Section 23.23 DBE Program Requirement

Instead of the present two-tier DBE program requirement, all recipients above a certain threshold level would have to have the same DBE program. This program would include a DBE directory, certification process and application of Part 23 certification standards, efforts overall goals, contract goals, a good faith award mechanism, a system for counting DBE participation, and procedures for denial and removal of certifications. Other DBE program elements include a policy statement, a DBE liaison officer, techniques to facilitate DBE participation, use of DBE financial institutions, a DBE development program, and a mechanism to ensure prompt payment of DBE subcontractors by prime contractors. The latter two provisions are new.

DOT agencies must review and approve recipients' DBE programs, as under the existing rule. The NPRM would add a provision codifying the existing interpretation that a recipient remains subject to a requirement to implement its program until DOT funds have been expended. An annual program update would also be required.

One DBE program issue that concerns the Department is that of the tenure of participating firms. Under the current rule, a firm can participate indefinitely, as long as it continues to meet eligibility criteria. While a few firms may cease to be eligible if they grow to exceed SBA business size criteria, there is no "graduation" provision, similar to that which SBA has established for its 8(a) program. A GAO report has also mentioned this issue as an area of concern.

Helping DBE firms develop to the point where they can compete in the open market is an important aim of the program. The absence of a graduation provision may make it more difficult for the Department to achieve that objective. A few firms may succeed within the DBE program to the point where they limit opportunities for other DBE firms to grow. According to FHWA figures, as few as 10 firms in some states get over 50 percent of the DBE work, while only 25 percent of all certified firms, nationwide, get any work at all. A graduation program could encourage successful firms to move into the open market while opening space in the DBE program for smaller, start-up businesses.

The Department is aware that a graduation program would preclude the participation of some firms that otherwise meet DBE eligibility criteria, which may raise legal and policy issues. Nevertheless, the Department seeks comment on whether it should adopt a graduation requirement of some kind. For instance, should there be a maximum number of years a DBE firm can participate in the program, or a limit on the number or dollar value of DBE contracts a firm may receive? Should there be a business development program, operated by the recipient, in which DBEs would be required to participate, at the conclusion of which the DBEs would have to compete in the open market? The Department seeks comment on both the concept and the details of a graduation provision.

Section 23.25 DBE Directory

This provision would retain the existing DBE directory requirement. The Department has heard of some instances in which a recipient has chosen to certify, or to list in its directory, a DBE firm as being eligible to participate in the DBE program only in certain specified fields of operation. For example, a firm might be an eligible DBE as a guardrail contractor but not an eligible DBE as a traffic control contractor. This approach is contrary to the intent of the rule. The directory listing of the type of work the firm prefers to do is a voluntary listing on the firm's part, for the convenience of readers of the directory. Nothing in this section however is intended to preclude a recipient from having a prequalification requirement for DBE firms where it has such a requirement for all contractors or subcontractors.

Section 23.27 Certification Process

Recipients must ensure that only the eligible firms participate as DBEs. The proposal would make several changes to the current rule's certification process provisions. One modification would provide that where a firm is located outside the geographic area in which the recipient operates, the recipient, rather than conducting its own site visit, could rely on reports of site visits performed by other DOT recipients.

Paragraph (c)(6) concerns the requirement that the recipient obtain or compile a list of the equipment owned by or available to the firm. This is not intended to require that firms own any particular set of equipment; it is only to require that whatever equipment is present be listed.

Paragraph (c)(7) proposes a new requirement. Owners of applicant firms would have to submit statements of personal net worth, consistent with SBA rules on this subject. This requirement is consistent with the Department's DBE statutes, which reference SBA regulations in the context of DBE eligibility. The Department proposes that recipients would use the same form (SBA Form 413, Personal Financial Statement) used by applicants to SBA's 8(a) program.

The purpose of the proposed requirement is to give recipients quantitative information on which to base decisions about economic disadvantage. As explained further in § 23.29, if an owner's net worth was over $750,000, the recipient would regard the presumption of economic disadvantage as having been rebutted. The owner would still have the opportunity to make an individual showing of economic disadvantage. This requirement would apply to all owners of applicant firms, and the recipient could not target individuals or members of certain groups for requests for this information.

Paragraph (c)(8) requires potential DBEs to complete and submit an appropriate certification form. A copy of the form (somewhat revised from that found in Schedule A of the present rule) is found in appendix A. It will include a signed affidavit. The Department seeks comment on whether it should retain this existing model form, modify it in various ways, or drop the model form. Should the use of the form be mandated, or should recipients be able to modify it at their discretion? (Recipient flexibility and ease of use for applicants may be countervailing considerations on this point.) Any suggestions for modification would be welcomed. In particular, we request suggestions based on successful forms that recipients have developed.

Between certification and a subsequent recertification review, that changes to a firm may occur that could affect the firm's eligibility. For example, the firm could be sold, one owner could buy out the interest of another, a business could grow beyond the bounds of SBA size limits, or the firm could enter into a meaningful relationship with a non-DBE firm. Paragraph (d) proposes a new requirement that firms would have a duty to report a significant change that could affect eligibility.

One of the most pervasive causes of concern in the certification process is the necessity for firms seeking work in more than one jurisdiction to make multiple applications for certification. This can result in additional time and expense for those firms. In response to this problem, paragraph (e) proposes that, beginning 3 years after the effective date of the revised rule, all recipients would have to join unified statewide certification programs. The Department make this proposal as a way of more closely approaching the ideal of "one-

stop shopping." Some states have already a statewide uniform certification program. (It would also be possible for a group of states, as an option, to combine their resources into a regional certification consortium as well. Regional programs would not be mandatory under the proposal, however.)

Once such a unified system is established, a firm wishing to work for any DOT recipient in the state would apply to the consolidated certification program, rather than to the individual recipient. The certification from the consolidated program would be accepted by all DOT recipients in the state. The Department seeks comment about the practicability, advantages, or potential disadvantages of such a system. The Department also seeks comment on the lead time needed to establish such a system. Is three years a reasonable time, or should a longer period (e.g., five years) be permitted?

Currently, the Department permits, but does not require, one recipient to accept certification decisions made by another. This provision would continue for the present. However, once unified certification systems are in place, the provision will no longer be necessary within a state. However, the Department proposes that unified certification systems could, but would not have to, accept one another's certifications.

The Department recognizes that there may be some situations in which a large city may have an unusually high proportion of the certification activity within its state or region (e.g., New York City). The Department seeks comment on whether the regulation should handle such situations in any different way under this requirement for uniform certification system. If so, how should a special provision work and where should it be applied?

This section also proposes a new requirement that all certifications by the statewide certification program would be precertifications. That is, the system would take certification actions before the involvement of the potential DBE in a particular contract was at issue. The Department also proposes that, once all the information was gathered by the recipient, it would have 60 days to make a certification, lest inaction by the recipient over a long period of time prejudice the opportunities of firms to participate. The Department seeks comment on whether this is an appropriate time limit.

Other suggestions have been made to deal with problems of multiple certifications. One is a uniform nationwide certification process run by DOT. This approach, in the Department's view, would probably result in slower, less effective service even if the Department had the resources to operate it. Another idea is "mandatory reciprocity"—requiring a recipient to accept any certification made by another recipient. This approach raises a serious concern about the quality of the certification process. That is, since the quality of recipient certification programs is likely to vary, mandatory reciprocity could create a "least common denominator" effect in which bad certifications drive out good. The Department seeks comment on whether limiting the scope of mandatory reciprocity (e.g., to a state or region) could mitigate this problem.

During the period before unified certification systems are established, the primary responsibility for certifying DBEs remains with each recipient. Even if another recipient or separate entity is authorized by a reciprocity agreement to do certifications, the recipient must keep the ultimate authority and responsibility to ensure that only eligible DBEs participate. The Department also seeks comment on whether a more centralized review of reciprocity agreements in DOT should take place.

The Department seeks comment on whether recipients should process a certification application from an out-of-state firm only if a recipient or unified certification system the state in which the firm resided had certified it first. The advantage of such an approach would be that it would give the recipient with superior knowledge of the recipient and its circumstances a lead role in making certification decisions. It could also help to reduce burdens on other recipients. However, out-of-state firms may be concerned that they would be unduly burdened by this approach.

Section 23.29 Standards for Certification as a DBE

In recent years, the application of the certification standards in § 23.53 of the existing regulation has become an increasingly contentious issue. Some parties have argued that standards are unequally applied. In some cases, some recipients appear to have misunderstood the language and intent of the Department's certification standards. In other cases, interpretations of the standards have been made that differ with the Department's intent. A GAO report fairly criticized the consistency of the Department's guidance in this area. One of the most important objectives of this revised regulation is to state clear and unmistakable certification standards that will be applied as uniformly as possible by recipients.

Paragraph (a) makes explicit two important general points. First, except with respect to situations in which social and economic disadvantage is presumed, the applicant has the burden of proving, by a preponderance of the evidence, that it meets certification criteria. The Department seeks comment on whether this is the appropriate burden of proof. Second, recipients should ordinarily not make decisions based on single factors. It is essential to the success of the program that certification decisions be based on considering all the facts, as a whole. Making single factor decisions is probably the most important source of error in certification decisions.

The first point that must be established is designated group status, without which a business owner does not benefit from the statutory presumption of social and economic disadvantage. Sometimes, this decision is obvious, and no further inquiry need be made. Other times, however, designated group status is not clear, and the recipient must make a decision based on a variety of factors, set forth in the rule.

The second area of consideration is business size. The proposed language explicitly references the necessity of meeting SBA size standards, which apply to affiliates of a company as well as the company itself. The rule also specifies that a firm may not exceed the statutory cap on average gross receipts, a concept which in turn is also defined by SBA regulations. The current statutory cap is $15.37 million. The Department will adjust this cap from time to time to reflect inflation.

Members of the designated groups are presumed to be socially and economically disadvantaged. A presumption is a very specific legal concept. It means that from fact X, one draws conclusion Y, without making any of the intervening factual or legal inquiries that would be necessary if one were making a case-by-case determination. When the DBE statute says that members of a members of certain designated groups shall be presumed to be socially and economically disadvantaged, the statute commands (except in a situation where the presumption is rebutted) that any individual who fits into one of these categories must be viewed as socially and economically disadvantaged, without further inquiry into the individual facts of his or her situation.

However, the presumption of social and economic disadvantage is rebuttable. How is the presumption

rebutted? The proposal refers to the statement of net worth. If an individual's net worth is over $750,000 (a figure drawn from SBA regulations for eligibility in the 8(d) program), the rule regards the presumption as having been rebutted. The burden of proof then shifts to the individual to prove disadvantage on an individual basis. The Department seeks comment on this approach.

The NPRM would clarify the place of 8(a) firms in the DBE program. A firm certified by SBA under its section 8(a) program has been found by another Federal agency, after a long and detailed individualized inquiry, to be owned and controlled by socially and economically disadvantaged persons. However, that an 8(a) firm which exceeds the statutory cap on average annual gross receipts (or which exceeds SBA size criteria for the type of work it would perform as a DBE) is not eligible. The recipient could inquire, as part of the initial certification process, into the average annual gross receipts and business size of a firm to determine whether the firm exceeds this cap. Information relevant to this issue (e.g., concerning affiliates) could also be collected as part of the initial certification process.

If the recipient doubts the ownership, control, or disadvantage of an 8(a) firm, it could bring these concerns to the attention of SBA and request a response from SBA. The recipient could also initiate a decertification proceeding against the firm, taking into account, any response received from SBA. The Department plans to work with SBA to establish a procedure to facilitate communication between the agencies in such cases.

In making individual determinations of social and economic disadvantage for firms not entitled to the statutory presumption, the NPRM tells the recipient to use relevant SBA regulations. For the information of commenters, the SBA regulations are attached at the end of this preamble. The Department seeks comment on whether it is appropriate to use these rules for this purpose, and whether any modifications are appropriate.

The basic requirements for ownership would remain unchanged. The firm's ownership by socially and economically disadvantaged individual must be real, substantial and continuing, going beyond *pro forma* ownership of the firm as reflected in an ownership document. The proposal would make a number of clarifications in specific provisions related to ownership. Codifying a long-established interpretation, securities held in trust could be counted in some circumstances (e.g., where the disadvantaged owner exercises effective control over the business). The Department seeks comment on how so-called "living trusts" should be addressed under this provision.

As under the current rule, there must be sufficient contributions of capital or expertise on the part of the disadvantaged owner. However, the NPRM would clarify that debt instruments from financial institutions and similar organizations do not necessarily render a firm ineligible, even if the debtor's ownership interest is security for the loan. In addition, it would not necessarily render a firm ineligible if the owner received his or her interest as the result of a transfer from another disadvantaged individual or through inheritance, a property settlement in a divorce, or a gift.

The NPRM would establish new special provisions for transactions between spouses. Assets (other than the business itself) held jointly or as community property by spouses could be counted toward ownership, the other spouse irrevocably renounces all rights in the ownership interest as provided by state law. Spousal cosignature of certain documents would also not constitute a ground to find a potential DBE firm ineligible, assuming other requirements are met.

However, the recipient would have to give heightened scrutiny to transactions in which assets held in sole ownership by one spouse are used to acquire the other spouse's ownership interest in a firm, or in which there is an interspousal transfer of the business or its assets. In keeping with the principle of avoiding single factor decisions, such a situation does not automatically render a firm ineligible. However, it should be a "red flag" to recipients to look very closely at the ownership and control of the firm to ensure that it meets eligibility requirements. In particular, situations in which evidence shows that a non-disadvantaged man has transferred an interest in a business to his wife or other female relative specifically for the purpose of obtaining DBE certification should be reviewed closely by recipients to ensure that ineligible firms do not participate in the program.

The current regulation, and the text of the proposed regulation as well, say that an individual may make a contribution of expertise as well as of capital in return for its interest in the business. The NPRM would clarify that the expertise must be in an area critical to the firm's operations and specific to that type of business, as well as documented in the firm's records. By specific to the type of business, we mean the expertise must relate to the substance of the type of work performed by the firm (e.g., in computer engineering, systems analysis or software design for a computer firm, in use of explosives for a demolition firm) rather than to generic business administration expertise (e.g., bookkeeping, office management). The Department seeks comment on this approach, as well as on whether contributions of expertise should be accepted at all.

With respect to control, the proposal retains the basic requirement that a DBE firm must be an independent business. An independent business whose viability does not depend on its relationship with other firms. In determining independence, the proposal directs recipients to look at the relationships between the potential DBE firm and other firms, their resources and personnel. The recipient may consider normal industry practices when making determinations about independence, but industry practices do not override requirements of this rule. The Department also seeks comment on whether there should be additional restrictions on the activities of non-disadvantaged participants in the firm (e.g., the non-disadvantaged owner must not be more than a 10% owner in a firm in the same or related field; the non-disadvantaged owner, within two years of the application, must not be a 10% or greater owner, or an officer, director or manager, of a firm that employed a disadvantaged owner) of the applicant firm; the spouse of a disadvantaged owner could not own more than 10% of a DBE firm). The purpose of such restrictions would be to limit the circumstances in which there was a dependent relationship between the DBE and former non-DBE employers or present non-DBE firms. On the other hand, such provisions could create additional burdens for DBEs applying for certification (e.g., having to research and present to the recipient information on the investments of non-DBE participants).

As under the present rule, the socially and economically disadvantaged owners of a DBE firm must possess the power to make day-to-day as well as longer-term decisions on matters of management, policy and operations. The proposal codifies the Department's interpretation of this requirement that an individual is not required to have hands-on, direct control of or expertise in every aspect of a firm's affairs. The disadvantaged owners may delegate various areas of management or daily operations to employees, regardless whether these persons are disadvantaged individuals themselves.

The disadvantaged owners must be able to use intelligently and evaluate critically information presented by employees of the firm concerning daily operations and management. Especially as organizations grow and become more complex, many important functions will be delegated. Also, in the absence of state or local law compelling a particular license or credential for a person controlling a firm, possessing such a license or credential in itself, is a requirement for certification.

In small private businesses, it is not uncommon for the owner or chief operating officer of the business to take a low salary so that more of the firm's revenues can be used to develop the business further. The business, however, may have to hire skilled employees at higher salary rates. For this reason, the proposal clarifies that differences in remuneration between employees and disadvantaged owners, while they may be relevant to determinations about control, are to be considered in the context of industry practices and company policies when the firm is being evaluated for certification. The proposal would also add that there should be no *per se* rule prohibiting participation of family members in a DBE firm. The ability of an individual to control a business is evaluated in the same way, regardless of the presence or absence of family relationships among other people involved. Other provisions are intended to clarify areas of confusion or misunderstanding. The proposal distinguishes "commercially useful function" concept (to be used only with respect to counting DBE participation of firms already certified) and ownership and control, a distinction which has sometimes eluded recipients. Recipients may not consider "commercially useful function" in determining whether a firm should be certified. This is consistent with long-established DOT interpretation of part 23.

In some cases, a firm has been certified for a number of years, has lost its certification because of a perceived defect in its ownership or control in the past. Present-day ownership and control matter; long-term circumstances that have no present relevance do not. There is no place for a doctrine of "original sin" in the DBE program. The proposal would make this point clear.

The proposal would codify the existing policy that only for-profit firms are eligible to be DBEs. Not for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified. The reason is that the purpose of the DBE program is to aid socially and economically disadvantaged entrepreneurs in the for-profit private sector. The Department seeks comment on whether there is any basis for changing this policy. Also, the Department asks whether, if there are state laws that allow a small for-profit firm to organize under state not-for-profit corporate law (e.g., in order to receive tax advantages), recipients should be allowed to certify such firms.

Under the proposal, a small business concern owned and controlled by one or more certified DBE firms may be an eligible DBE. The Department seeks comment on whether a more restrictive provision, like that of the SBA 8(a) program (which limits an 8(a) firm to a 10 percent equity ownership role in another 8(a) firm) is appropriate. Also, firms owned by Indian tribes or Alaskan native corporations may be regarded as being owned by socially and economically disadvantaged individuals, even if ownership may formally reside in the tribe as an entity, rather than in individual members of the tribe. Such a business must meet other criteria of the regulation (e.g., size, control). This also codifies an existing interpretation.

Section 23.21 Overall Goals

The proposed provisions follow those of current subpart D. The Department seeks comment on whether the public notice provision of this section continues to be useful.

Section 23.33 Contract Goals

The contract goal provisions of the proposal follow those of the existing rule. As now, recipients are not required to set each contract goal at the same percentage level as the overall goal. However, over the period covered by its overall goal, the recipient must ensure that its contract goals are set so that, if met, they will cumulatively result in the recipient meeting or exceeding its approved overall goal.

To further the recipient's efforts in maximizing opportunity while encouraging equitable distribution of contract opportunities, a recipient is encouraged to develop innovative contracting techniques to increase DBE participation in DOT funded programs. For example, in addition to the new DBE Development Program proposed in § 23.39, a recipient could provide for incentive programs to encourage the general contracting industry to subcontract with responsible DBEs.

There may be additional costs associated with locating, selecting, utilizing, training and assisting DBEs, for maintaining support records; and for supplying all facilities and services to complete this DBE provisions when the non-DBE contractor goes beyond the minimum contract requirements. The Department seeks comment on whether, in the event that a non-DBE contractor seeks the contract goal requirement, the contractor should be eligible to receive compensation for some or all of this cost, based on documented evidence of the DBE completion of the assigned subcontract work and final payment to the DBE subcontractor for the work performed. Such compensation could be calculated based on such factors as number of DBEs participating, level of participation exceeding the contract requirement, expanded area of DBE participation, etc. The Department seeks comment on whether such an approach would be practicable and beneficial.

Over several years, contractors have brought to the Department's attention what is referred to as the "equitable distribution" problem. That is, DBEs are said to cluster in certain low-capital intensive subcontracting areas, reducing opportunities for non-DBE firms in these fields. The Department seeks comment on a number of ideas that have been suggested to address this problem:

(1) The recipient could set a ceiling on DBE participation eligible to count toward goals in a particular field or fields on a contract or set of contracts to ensure that non-DBE subcontractors were not excluded (e.g., no more than 50 or 60 or 75 percent of work in a field could be credited to DBE goals on a contract).

(2) The recipient could set a ceiling of this sort only if DBE participation in that field typically exceed a certain level (e.g., 90%).

(3) The recipient could set such a ceiling, but only if it ensured that any limitation on DBE participation in field X was made up by participation in field Y in which DBEs had not participated in large numbers in the past.

(4) Prime contractors could get "extra credit" for using DBEs in non-traditional fields. For example, a firm could get $1.25 credit toward its goal for every $1.00 spent on a DBE in a field in which DBEs typically had low participation.

All of these ideas appear to have disadvantages. They could reduce DBE participation and in some cases, or make the achievement of statutorily mandated goals more difficult or raise legal authority issues. The Department seeks comment on how these or other mechanisms might be established in a way that would minimize potential disadvantages. We also point out that the DBE development program discussed below is targeted at providing assistance to DBEs seeking to move out

of the traditional areas in which DBEs have worked.

A new provision would be added making explicit current policy concerning the role of operating administrations in oversight of recipient's contract goals. The operating administrations would not necessarily to review every contract goal a recipient sets. However, an operating administration could choose to review any contract goal and require that it be approved by the operating administration.

This section also includes a proposed provision, applicable only to the FTA program, concerning business opportunities like concessions in transit stations. (The provision would not apply to FAA programs, since there is a separate program for airport concessions in subpart D. Also, it would not apply to FHWA programs, because FHWA grantées appear seldom to have business opportunities of this kind. However, the Department seeks comment on whether a similar provision could usefully apply to the FHWA program.) FTA's experience under § 23.43(d)(2) of the current rule, which requires recipients to submit separate overall goals for lessees, has not worked as well as hoped. Therefore, we propose that FTA recipients include goals for DBE participation when soliciting competitive bids or proposals from prospective commercial levees, concessionaires, etc. These business opportunities typically result from, or take place in facilities constructed with, Federal financial assistance. However, because business opportunities for contracts of this kind are, as such, contracts in which FTA funds participate, DBE goals and participation in this area would be counted separately from the other goals and DBE participation under part 23.

Section 23.35 Good Faith Efforts

This section states the Department's continuing policy that recipients shall award contracts only to a contractor who meets the DBE contract goal or demonstrates that it has made good faith efforts to do so. Appendix B sets forth the kind of good faith efforts this section contemplates. The proposed section would have three new elements. First, all bidders would reflect DBE participation in their bid documents. Compliance with DBE requirements would always be a matter of responsiveness. The existing rule permits recipients to determine whether to treat DBE compliance as a matter of responsiveness or responsibility. The change is intended to reduce the likelihood of "bid shopping," which can adversely affect DBEs, but it could increase burdens on unsuccessful bidders for prime contracts.

Second, a recipient would not be permitted to use more stringent mechanisms for contract award for DOT assisted contracts (e.g., a conclusive presumption). The proposal takes a neutral position with respect to DBE set-asides, neither authorizing nor prohibiting them. However, the rule would prohibit recipients from using group-specific set-asides (e.g., a set-aside solely for firms owned by Black individuals, as opposed to a set-aside for all DBE firms).

Third, the section would prohibit a prime contractor from replacing a DBE subcontractor except where the DBE breaches its contract. The prime contractor would have to provide written notice to the recipient. Good faith efforts to find a substitute DBE would be required.

Appendix B lists matters recipients should consider in receiving contractors' good faith efforts. One of the considerations is that extra costs involved with finding and using DBEs are not an adequate reason for failing to meet a goal, so long as these costs are "reasonable." The Department seeks comment on whether this provision should be made more specific (e.g., by requiring recipients to quantify, in their bid documents, what a "reasonable" cost would be for DBE participation in that contract).

Section 23.37 Counting DBE Participation

This provision follows the counting provisions of the existing part 23. There would be some clarification of the concept of "commercially useful function" and an explicit recognition of FHWA's practice that a DBE must perform at least 30 percent of the work of a contract with its own forces to be viewed as performing a commercially useful function. In addition, we would add to prohibit prime contractors from counting DBE participation toward meeting its goal until the DBE had been paid.

The Department seeks comment on several counting issues. First, should materials obtained by DBEs from non-DBE sources count toward DBE goals? For example, a DBE steel erection firm may have a contract to obtain and install a quantity of steel, which it buys from a large non-DBE steel company. Should the total amount of the contract, including the cost of the steel, be counted toward DBE goals, or only the work performed by the DBE itself, exclusive of the steel? A broader question is whether any portion of a contract subcontracted by a DBE to a non-DBE should be counted toward DBE goals. That is, if a DBE firm gets a $100,000 subcontract, and then subcontracts $65,000 of the work to a non-DBE, should $100,000 or $35,000 be counted toward DBE goals? (The NPRM proposes that the DBE could not subcontract any portion of a subcontract back to the prime contractor or its affiliate.) Finally, where a DBE is a prime contractor, should the firm have to meet a DBE goal (under the present rule it is not required to do so)?

Section 23.39 Additional Program Elements

The program elements discussed in this section include a policy statement, a DBE liaison officer, the use of outreach or supportive services techniques, and investigating the use of DBE financial institutions. These elements are part of the current rule.

The NPRM proposes a new program element to deal with the apparently pervasive problem of slow or irregular payments by prime contractors to DBE subcontractors. The recipient would use one or more of five provisions. The recipient could choose which options to use; no one of the proposed options would be mandatory. The recipient would include appropriate clauses in its contract documents to make the mechanism contractually binding on all parties. In requiring a prompt payment mechanism, the Department is not proposing a novel or unique requirement. For example, Federal agency procurement is subject to the requirements of the Prompt Payment Act.

The first option would be to establish an alternative dispute resolution procedure to resolve disputes between primes and DBE subcontractors. A second approach would be a prompt payment clause in all contracts, including appropriate sanctions for failure to comply. A third approach would be a requirement that a prime contractor obtain prior approval from the recipient based on good cause, for any delay or postponement of the payment of funds to a DBE subcontractor. A fourth option would be a procedure through which payments owed to DBE subcontractors be paid directly to the subcontractor by the recipient, rather than through the prime contractor. A final approach would be a limitation on the ability of prime contractors to draw down contract funds without paying DBE subcontractors. The Department seeks comment on the merits of these proposals. In particular, the Department seeks information on any non-regulatory, or less prescriptive,

approaches to the prompt payment problem that commenters may wish to suggest.

Another new proposed element would be a business development program. This program would be aimed at helping firms move beyond the traditional areas of DBE participation. Appendices C and D set out proposed guidelines for this program element. Each operating administration would decide whether its recipients would be required to include this element (e.g., on the basis of supportive services or other resources available in the respective modal programs).

The recipient's DBE program would also describe the means by which the recipient enforces requirements on subrecipients, contractors and subcontractors. The operating administrations will oversee the recipients' enforcement of their requirements. As the operating administration notifies a recipient of a problem, the recipient would have to take remedial steps. If the recipient fails to do so, the operating administration could invoke available administrative sanctions.

Section 23.41 Transit Vehicle Manufacturers

This provision is the same as its counterpart in the existing DBE regulation.

Section 23.51 Recipients' Denials of Initial Requests for Certification

This provision and § 23.53 are designed to ensure that recipients afford adequate procedural due process to DBE firms and develop an adequate record of certification actions. The provisions would reform and standardize existing certification practice.

When a firm's initial request for certification is denied, the recipient must provide a written explanation of the reasons, specifically referencing evidence in the record that supports each reason for the denial. There must not be generic denials; each denial must be supported by specific evidence.

The Department also proposes that, within 30 days of receiving a written explanation, a firm may show to the recipient that it has resolved the specific problems cited as reasons for the denial. There would be an informal opportunity to be heard. Mere paper changes, without substantive changes, would not "cure" a defect.

When it denies certification to a firm, the recipient would be required to establish a 6–12 month waiting period before the firm may reapply for certification. Many recipients already follow this practice. The Department seeks comment on whether the rule should specify a different time period, or whether, as under the existing regulation, this determination should be left to the recipients' discretion.

Section 23.53 Recipients' Proceedings to Remove Eligibility

This section applies only to firms who already have a certification that a recipient seeks to eliminate. This section would apply to any removal of an existing certification, whether originating with an outside complaint, information provided by a DOT agency, a recertification review, etc. Like § 23.51, it is intended to reform and standardize recipients' procedures.

When a recipient receives a complaint alleging that a currently certified firm is ineligible, the recipient would first notify the firm that the complaint had been filed. This written notice would summarize grounds on which the firm's eligibility is being questioned. The recipient is not required to accept a general allegation that a firm is ineligible and could not propose decertification based on an anonymous complaint. This provision is not intended to interfere with the Department of Transportation Inspector General's "Hotline," which could continue to receive anonymous complaints. A recipient could institute its own investigation based on information from the Hotline or other sources, even if anonymous.

The recipient would then review all available information and conduct an additional investigation, if needed. If the recipient determined, based on this review, that there is reasonable cause to believe that the firm is ineligible, the recipient would provide written notice to the firm that the recipient proposes to find it ineligible, setting forth the reasons for the proposed determination. If the recipient determines that there is not reasonable cause, it notifies the interested parties of this determination. All statements of reasons for findings on this issue of reasonable cause would have to specifically reference evidence in the record on which the finding is based.

A recipient may also come to question the eligibility of the firm based on its own recertification review or other investigation. The recipient would follow the same reasonable cause notice procedure. The NPRM would also modify an exiting Part 23 provision that allows the Department to suspend a certification pending a certification review. In the proposal the Department could, after notifying the recipient and the firm, direct a recipient to suspend a certification of a firm and to open a removal of eligibility proceeding. The Department seeks comment on whether such a provision is advisable or whether a milder remedy (e.g., a request by the Department for the recipient to conduct a recertification review) would be better.

Once a recipient notifies a firm that it has found reasonable cause, the recipient must give the firm an opportunity for a hearing. The recipient has the burden of proving by a preponderance of evidence, that the firm does not meet certification standards. The Department seeks comment on whether this is the appropriate burden of proof. A complete record of the hearing must be maintained. A firm may also elect to present information and arguments in writing, without going to a hearing.

One of the most important components of due process in any administrative proceeding is the separation of functions. If a proceeding is to be fair, the "prosecutor" and "judge" cannot be the same person or office. The recipient can provide for separation of functions in a number of ways. For example, a decision can be made by an Administrative Law Judge. An official of the state or local agency involved, who is outside the DBE program office, can be designated as the decisionmaker, while the DBE program office takes advocate role. However, the separation of functions is accomplished, it is crucial that the decisionmaker cannot be the same as, subject to influence by or under the direction of the office proposing to remove the firm's eligibility.

As the proponent of the removal of a certification, the recipient (i.e., the office acting as the "prosecutor") always bears the ultimate burden of persuasion that the firm is ineligible. When the recipient makes a "reasonable cause" determination, however, a burden of going forward with evidence concerning its eligibility shifts to the firm.

In fairness to firms whose eligibility is in question, the NPRM proposes that a decision to remove eligibility could be based only on changes in circumstances since the time of the recipient's most recent certification of the firm, on information that has been fraudulently concealed or misrepresented in previous certification reviews, or in order to be consistent with changes in part 23 itself. The intent of this provision is to prevent the situation in which a firm is deceitful based on a changed view by the recipient of the same facts that earlier lead to the firm's certification. The recipient could, however, decertify a firm if the recipient made a documented finding that its previous decision had been clearly erroneous (e.g., because a

key piece of information in the file had been overlooked by the previous decisionmaker).

Under the proposal, recipients must provide firms a letter setting forth the decision in an eligibility proceeding, including specific references to the evidence in the record that support each reason for the decision. The notice would also inform the firm of the consequences of the recipient's decision and of the availability of an administrative appeal to DOT.

Section 23.55 Administrative Appeals to the Department of Transportation

Under § 23.55 of the existing DBE regulation, persons dissatisfied with recipients' certification decisions may take an administrative appeal to the Department of Transportation. The existing provision does not set forth procedures for these appeals, however. The proposed section would remedy this problem.

The proposal provides that any firm which is denied certification, or whose eligibility is removed by a recipient, or before owner is determined not to be a member of a designated disadvantaged group or concerning which the presumption of disadvantage has been rebutted, may make such an appeal. (The complainant in an ineligibility complaint, where the recipient does not remove the firm's eligibility, may also appeal. A DOT operating administration may initiate such a proceeding in certain circumstances, as well.) Actions by a recipient that deny an individual the benefit of the presumption of social and economic disadvantage may also be appealed under this section.

As under the present regulation, a recipient's decision would remain in effect pending the Department's decision on appeal. The Department seeks comment on whether there should be a provision allowing the Department to stay the effect of a recipient's determination while an appeal is pending. An appeal would have to be made in writing within 90 days of the recipient's decision.

The Department would have to make a decision based solely on the administrative record, which, under §§ 23.51 or 23.53, the recipient will have developed before making its own decision. The Department does not make a *de novo* review of the matter, and DOT would not hold a hearing. DOT could, however, supplement the record with relevant information made available by the DOT Office of Inspector General, other law enforcement authorities the firm, the recipient, and other sources.

After reviewing the record, DOT would uphold the recipient's decision if it is supported by substantial evidence and consistent with part 23. The Department seeks comment on whether the "substantial evidence" standard of review is appropriate here, or whether an alternative standard, such as "arbitrary and capricious," would be better. If the recipient's decision did not meet the standard of review, the decision of the recipient would be reversed. The Department would have the option of sending the record back to the recipient for additional information if it appeared to be incomplete. The Department could not uphold recipients' decisions based on grounds not specifically articulated in those decisions. That is, the Department's job is not to search for reasons to uphold decisions; rather, it is to evaluate the reasons for decisions given by recipients. Again, written notice of the decision would have to be provided to interested persons.

The Department seeks comment on whether there should be a time limit on its handling of appeals. If so what should it be? (The NPRM proposes 60 days.) What should be the effect of a failure to meet the deadline?

Section 23.57 Effect of Decisions

The present rule leaves unclear the effect of DOT certification appeal decisions. The proposal would clarify this matter. Since a determination under section 23.55 is on review of an administrative record, and not a *de novo* determination on the merits, it would be binding only on the recipient (or unified certification program) involved. The recipient would take the action directed by the appeal decision. Other recipients could take note of the action, and, if appropriate, open an inquiry into the firm's status. There would be no automatic action taken as the result of the Department's affirmance or reversal of another recipient's decision.

The Department seeks comment on whether, following a recipient or DOT decision in a certification case, a second recipient could take action without going through its own proceeding. For example, if State A decertifies a firm, should State B be able to adopt this finding (and/or a DOT decision upholding the finding) and decertify the firm, or should State B have to go through its own proceeding to remove eligibility? The proposed regulation takes the latter course.

The Department is concerned that information about its decisions has not been readily enough available to recipients, contractors, and other interested persons. The Department is considering a number of steps to improve the availability of decisions. These include publishing or making available substantive summaries of decisions, creating an index to facilitate retrieval of decisions on various substantive issues, or creating a computer access system (analogous to, or perhaps added to, the Department's new Alcohol and Drug Information Center (ADIC)). The Department seeks comment on the information needs of users and how we might best meet these needs.

Section 23.59 Compliance With Overall Goal Requirements

This section emphasizes that any noncompliance with a part 23 requirement may subject a recipient or contractor to program sanctions available under the authority of the three operating administrations. It is basically the same as the present provision on the subject.

Sections 23.61–21.65 Enforcement Actions

Sections 21.61 and 21.63 have to do with noncompliance complaints; that is, complaints that a recipient has failed to meet its obligations under part 23. These provisions are essentially similar to those in the existing part 23 for FHWA and FTA programs. Because, as a matter of statute, FAA enforcement proceedings must comply with section 519 of the Airport and Airway Improvement Act, there would be a new, separate section for FAA enforcement actions. The current procedural rules implementing section 519 are found at 14 CFR part 13.

In § 21.65, the proposal discusses the application to the DBE program of the Department's suspension and debarment rules and the Program Fraud and Civil Remedies Act. The Department seeks comment on whether the reference to suspension or debarment procedures are needed, or whether those procedures can stand on their own. Is there any due process problem with the application of suspension and debarment in the DBE context? In addition, the Department could suspend or revoke a certification of a firm which is indicted on the basis of conduct related to the DBE program. A certification would be revoked upon conviction of a criminal offense related to the DBE program.

The Department also seeks comment on what additional compliance and enforcement measures, if any, should be added to the regulation.

Section 23.67 Miscellaneous Provisions

This section includes a requirement to cooperate with DOT and recipient investigations and a prohibition on intimidation and retaliation, both drawn from the existing regulation. It also clarifies that, in response to requests for program information, the Department would follow Freedom of Information Act requirements.

Standards for Determination of Social and Economic Disadvantage

For information purposes, the Department presents the following standards for determination of social and economic disadvantage, drawn from Small business Administration rules (See 13 CFR 124.105–124.106). The standards provide for the following:

Social Disadvantage

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. For social disadvantage relating to Indian tribes and Alaska Native Corporations, see § 124.112(a).

(b) *Members of designated groups.* (1) In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea. The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section.

(2) An individual seeking socially disadvantaged status as a member of a designated group may be required to demonstrate that he/she holds himself/herself out and is identified as a member of a designated group if SBA has reason to question such individual's status as a group member.

(c) *Individuals not members of designated groups.* (1) An individual who is not a member of one of the above-named groups must establish his/her individual social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into and/or advancement in the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant:

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to institutions of higher education; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into nonprofessional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have impeded the individual's business development.

(d) *Socially disadvantaged group inclusion*—(1) *General.* Upon an adequate preliminary showing to SBA by representatives of an identifiable group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so. SBA shall publish in the **Federal Register** a notice of its receipt of a request that it consider a group not specifically named in paragraph (b)(1) of this section to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the 8(a) program. The notice shall adequately identify the group making the request, and if a hearing is requested on the matter and such request is granted, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AA/MSB&COD.

(2) *Standards to be applied.* In determining whether a group has made an adequate preliminary showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine:

(i) Whether the group has suffered the effects of prejudice, bias, or discriminatory practices;

(ii) Whether such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in the Small Business Act; and

(iii) Whether such conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to all small business owners. If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish the notice described in paragraph (d)(1) of this section.

(3) *Procedure.* Once a notice is published under paragraph (d)(1) of this section, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in

written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under paragraph (d)(1) of this section, it shall afford a period of not more than thirty (30) days for public comment concerning the petition for socially disadvantaged group status. If appropriate, SBA may hold hearings within such comment period. Thereafter, SBA shall consider all information received and shall render its final decision within 60 days of the close of the comment period. Such decisions shall be published as a notice in the **Federal Register**. Concurrent with the notice, SBA shall advise the petitioners of its final decision in writing. If appropriate, SBA shall amend this regulation accordingly.

Economic Disadvantage

(a) *Economic disadvantage for the 8(a) program.* (1)(i) For purposes of the 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for purposes of 8(a) program eligibility, SBA shall compare the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals.

(ii) This program is not intended to assist concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

(iii) For economic disadvantage as it relates to tribally-owned concerns, *see* § 124.112(b)(2).

(2) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, SBA will consider factors relating both to the applicant concern and to the individual(s) claiming disadvantaged status. Factors fall into three general categories: The personal financial condition of the individual(s) claiming disadvantaged status, including that individual's access to credit and capital; the financial condition of the applicant concern; and the applicant concern's access to credit, capital and markets.

(i) *Personal financial condition of the individuals claiming disadvantaged status.* This criterion is designed to assess the relative degree of economic disadvantage of the individual, as well as the individual's potential to capitalize or otherwise provide financial support for the business. The specific factors to be considered include, but are not limited to: the individual's personal income for at least the past two years; total fair market value of all assets; and the individual's personal net worth. Subject to the exclusions set forth in paragraph (a)(2)(i)(B) of this section, an individual whose personal net worth exceeds $250,000 will not be considered economically disadvantaged for purposes of 8(a) program entry. For personal net worth thresholds relating to continued 8(a) program eligibility, *see* § 124.111(a).

(A)(*1*) Except as provided in paragraph (a)(2)(i)(A)(*2*) of this section, when married, an individual upon whom eligibility is based shall submit a financial statement relating to his/her personal finances and a separate financial statement relating to his/her spouse's personal finances. A married applicant individual residing in any of the community property states or territories of the United States (e.g., Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico Texas, Washington and Wisconsin) must clearly identify on his or her financial statement those assets which are his or her separate property and those which are community property. The spouse of such married applicant must similarly identify on his or her financial statement those assets which are his or her separate property and those which are community property. A one-half interest in the assets identified as community property (and income derived from such assets) will be attributed to the applicant individual for purposes of determining economic disadvantage. Assets or a community property interest in assets, which applicant spouse has transferred to a non-applicant spouse within 2 years of the date of application to the 8(a) program will be presumed to be the property of the applicant spouse for purposes of determining his/her personal net worth. However, such presumption shall not apply to any applicant spouse who is subject to a legal separation recognized by a court of competent jurisdiction. A financial statement of a spouse of an applicant is not required if the individual and his/her spouse are subject to a legal separation recognized by a court of competent jurisdiction. However, an applicant individual must include on his or her statement all community property in which he or she has an interest.

(*2*) Except for concerns where both spouses are individuals upon whom eligibility is based, the requirement of paragraph (a)(2)(i)(A)(*1*) of this section, relating to the separate financial statements, applies only to determinations of economic disadvantage for purposes of 8(a) program entry. For a concern where both spouses are individuals upon whom program eligibility is based, the personal net worth of each spouse individually will be considered for program certification and for continued program eligibility.

(B) Whenever SBA calculates the personal net worth of an individual claiming disadvantaged status for purposes of the 8(a) program, SBA shall exclude the individual's ownership interest in the applicant or participating 8(a) concern and the equity in his/her primary personal residence, but shall not exclude any portion of such equity in his/her primary residence which is attributable to excessive withdrawals from the applicant or participating 8(a) concern.

(C) Whenever SBA calculates the personal net worth of an individual claiming to be an Alaskan Native, as defined in § 124.100, for purposes of qualifying an individually owned 8(a) applicant concern, SBA shall include assets and income from sources other than an Alaska Native Corporation, as defined in § 124.100, and shall exclude from such calculation any of the following which the individual receives from any Alaska Native Corporation:

(*1*) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

(ii) *Business financial condition.* This criterion will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals. In

evaluating a concern's financial condition, SBA's consideration will include, but not be limited to, the following factors: business assets, revenues, pre-tax profit, working capital and net worth of the concern, including the value of the investments in the concern held by the individual claiming disadvantaged status.

(iii) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. In making the evaluation, SBA shall consider the concern's access to credit and capital, including, but not limited to, the following factors: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; and bonding capability.

(b) *Economic disadvantage for the 8(d) Subcontracting Program, Small Disadvantaged Business Set-Asides, Small Disadvantaged Business Evaluation Preferences and for any other Federal procurement programs requiring SBA's determination of disadvantaged status.* (1) For purposes of the section 8(d) Subcontracting Program and other programs requiring SBA's determination of disadvantaged status, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and whose diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage for the section 8(d) Subcontracting program, Small Disadvantaged Business set-asides and Small Disadvantaged Business Evaluation preferences, SBA will consider the factors set forth in paragraph (a) of this section but will apply standards to each factor that are less restrictive than those applied when determining economic disadvantage for purposes of the 8(a) program. This approach corresponds to the Congressional intent that partial or complete achievement of a concern's 8(a) program business development goals should not necessarily preclude its participation in other Federal procurement programs for concerns owned and controlled by socially and economically disadvantaged individuals.

(2) An individual whose personal net worth exceeds $750,000 as calculated pursuant to paragraph (a)(2)(i) of this section, will not be considered economically disadvantaged for purposes of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or any Federal procurement program which uses section 8(d) for its definition of economic disadvantage.

Proposed Reporting Form for DBE Data

BILLING CODE 4910-62-M

U.S. Department of Transportation

Report of DBE Awards and Commitments

1. Administration: _____ 2. Fiscal Year: _____ 3. Report Period: _____
4. Name of Recipient: _____
5. Address: _____
6. City / State / Zip: _____
7. Annual DBE Goal: _____%
8. Total prime contracts / procurements awarded this report period to all contractors: (a) Number _____ (b) $ Value _____

	Number		$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contracts / procurements awarded this report period				
10. DBE subcontracts / procurements awarded this report period				
11. Subcontracting / procurement commitments to DBEs this report period				

12. Total prime contracts / procurements awarded to date to all contractors: (a) Number _____ (b) $ Value _____
13. Total awards to date to DBEs: (a) Number _____ (b) $ Value _____ (c) _____%

14. DBE prime and subcontracts / procurements awards by ethnic group:	Number		$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
Black American				
Hispanic American				
Native American				
Asian-Indian American				
Asian-Pacific American				
Other				
TOTAL				
15. Number and $ Value of DBE prime and subcontract awards by type of work:				
(a) Professional / Consultant Services				
(1)				
(2)				
(3)				
(b) Construction				
(1)				
(2)				
(3)				
(c) Supplies				
(1)				
(2)				
(3)				
(d) Equipment				
(1)				
(2)				
(3)				
(e) Other				
(1)				
(2)				
(3)				
TOTAL				

16. Name of Preparer: _____ 17. Telephone No. ( ) _____

The Public reporting burden for this collection of information is estimated to average one hour per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to OMB and the DOT at the following addresses:

Office of Management and Budget
Paperwork Reduction Project (2105-0510)
Washington, DC 20503

and

U.S. DOT/OST/OSDBU, S-42
400 Seventh Street, S.W.
Washington, DC 20590

DOT F 4000.6 (8/88) OMB Approval No. 2105-0510 (Expires 7-31-94)

DOT 4630—REPORT OF DBE AWARDS AND COMMITMENTS (Instructions)

1. The DOT Operating Administration providing Federal financial assistance. (Example: FHWA, FTA, FRA, FAA).

2. Federal fiscal year, beginning October 1 and ending September 30. (For FAA recipients indicate the time period covered by the goals, if applicable).

3. The period of the Federal fiscal year for which the report is being submitted. If report is submitted on a quarterly basis enter the number 1, 2, 3, or 4—October 1 through December 31 (10/1—12/31) would be the first quarter. If other than a quarterly report specify the time period using the beginning and ending month and day. (Recipients of an FAA grant of $1 million or more which will result in DOT-assisted contracts should submit the report each report period until all contracts and subcontracts under that portion of the grant are executed. All other FAA recipients should submit the report annually following the end of the fiscal year. Sponsors of more than one airport should submit a separate report for each facility).

4. Name of the recipient or subrecipient. (In the case of the Federal-aid highway program, this would be the State highway agency).

5. Street address or post office box number of recipient or subrecipient. (May be omitted by State highway agencies).

6. City, State and ZIP Code for recipient or subrecipient. (May be omitted by State highway agencies).

7. The recipient's annual DBE goal for the fiscal year indicated in Item 2 as approved by the DOT Operating Administration indicated in Item 1

8(a). The total number of DOT-assisted prime contracts/procurements awarded during the reporting period. These totals shall include all types of contracts/procurements for which DOT funds are used, including professional/consultant services, construction, purchase of material or supplies, lease or purchase of equipment, and any other types of services. (For FHWA recipients this includes advance construction projects).

8(b). For FHWA and FAA recipients, the dollar value of the total Federal share of all prime contracts and procurements reported in Item 8(a). For FTA recipients the total dollar of FTA-assisted funds. Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted).

9. For FHWA, FTA and FAA recipients, the number and dollar value of the Federal share of the prime contracts/procurements reported in Item 8 which were awarded to DBEs. Recipients of other DOT Operating Administrations may include recipient matching funds in the reported DBE awards. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c.

10. For FHWA, FTA and FAA recipients, the number and dollar value of the Federal share of the *DBE subcontracts/procurements* actually executed by (non DBE) prime contractors on all active DOT-assisted prime contracts/procurements during the reporting period. Recipients of other DOT Operating Administrations may include recipient matching funds in the reported DBE subcontract awards. Include all qualifying subcontracts executed during the period regardless of when the prime contract was executed. This includes transactions for professional/consultant services, construction, purchase of materials, lease of equipment, etc., which were made with a DBE during the reporting period. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c.

11. For FHWA recipients, the number and dollar value of the Federal share of subcontracting commitments to DBEs made by successful (non DBE) bidders at the time of prime contract/procurement award for all prime contracts/procurements reported in Item 8. The total commitments to DBEs should be included in Columns b and d. The portion of total DBE commitments that were made with women-owned firms should be included in Columns a and c. Commitments are written indications to the recipients that the (non DBE) successful bidder intends to use specific DBEs as subcontractors, material suppliers, etc. (NOTE: THIS ITEM DOES NOT APPLY TO FTA, FAA and FRA RECIPIENTS).

12(a). The total number of DOT-assisted prime contracts/procurements awarded to date. This is the sum of all prior and current awards as reported in Item 8(a).

12(b). For FHWA, FTA and FAA recipients, the dollar value of the total Federal share of all prior and current prime contracts and procurements reported in Item 8(b). Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients, the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted).

13(a). For FTA and FAA recipients, the number of executed DBE prime contracts/procurements reported to date in Item 9(b) and the executed DBE subcontracts/procurements reported to date in Item 10(b). For FHWA recipients, use the sum of Item 9(b) and Item 11(b) subcontracting/procurement commitments to DBEs as reported to date.

13(b). For FTA and FAA recipients, the dollar value of the total Federal share of the DBE prime contracts/procurements and DBE subcontracts/procurements reported to date in Item 9(d) and Item 10(d). FHWA recipients should include the dollar value of the total Federal share reported to date in Item 9(d) and Item 11(d). Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted).

13(c). The percent of DBE awards to date, i.e. Item 13(b) divided by Item 12(b) and the results multiplied by 100.

14. This is a breakdown by ethnic group of the number and dollar value of all DBE prime contracts/procurements reported in Item 9 plus all executed DBE subcontracts/procurements reported in Item 10. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c. For FHWA, FTA and FAA recipients, the dollar value of the Federal share is reported. For recipients of other DOT Operating Administrations, recipient matching funds may be included.

The ethnic group definitions for the MBE program are contained in 49 CFR 23.5, dated March 31, 1980, and for the DBE program, in 49 CFR 23.62, dated July 21, 1983 and revisions dated October 21, 1987 and May 23, 1988. The ethnic group labeled "Other" includes DBEs owned and operated by individuals who have been determined by recipients on a case-by-case basis to be socially and economically disadvantaged. In the case of split ownership by two or more minorities/disadvantaged individuals, the DBE participation should be reported for the ethnic group which owns the largest share. If the ownership is equal, the DBE participation should be reported for the ethnic group involved which is listed first.

15. The number and dollar value of awards by type of work performed by DBEs for the prime contracts/procurements reported in Item 9 and the executed subcontracts/procurements reported in Item 10. Prime and subcontracts/procurements which involve more than one type of work should be reported only for the predominant work type based on cost.

NOTE: Examples of the types of work are listed below:

a. Professional/Consultant Services:
- —*Engineering*—professional services such as design or construction inspections performed by an engineering firm.
- —*Architectural*—professional services performed by an architectural firm.
- —*Accounting*.
- —*Right-of-Way*—Right-of-way services such as fee appraisals and negotiations.
- —*Supervision and management of transit system operations*.
- —*Other*—Other professional services such as supportive services and research contracts.

b. Construction:
- —*Grading and Drainage*—grading, drainage, clearing and related construction items.
- —*Paving*—construction of base course, pavement and related items.
- —*Structures/Buildings*—bridge construction operations, including piling, substructure, superstructure, etc., and building construction including plumbing, heating, electrical work, etc.
- —*Materials*—manufacture and/or supply of materials which are incorporated in a construction project.
- —*Equipment*—rental of equipment for use on a specific construction project.
- —*Trucking*—agreements for the hauling of earthwork or other materials for a construction project.
- —*Traffic Control*—permanent traffic control items such as signs, signals or markings, and temporary traffic control items such as barricades and flagging.
- —*Landscaping*—landscaping, seeding, sodding, erosion control and related items.
- —*Other*—other construction activities such as lighting contracts and guard rail.

c. Supplies:
- —*Fuel*.
- —*Tires*.
- —*Other*.

d. Equipment:
- —*Leasing*.
- —*Purchase*.
- —*Other*.

e. Other:
- —*Building leases*.
- —*Printing*.
- —*Etc*.

16. Typed name of person who prepared the report.

17. Telephone number of person who prepared the report

BILLING CODE 4910-62-C

Regulatory Analyses and Notices

Executive Order 12291

This NPRM does not propose a major rule under Executive Order 12291. The NPRM is significant under the Department's Regulatory Policies and Procedures. However, cost impacts of the proposal, if adopted, would be minimal. That is, the proposal changes would realize greater efficiencies in program administration and would not impose significant new costs on recipients or prime contractors. There would probably be some savings realized: DBE applicants would benefit from the "one-stop shopping" certification process, and state and local governments would benefit from the clarification of certification standards. Otherwise, program costs and benefits would remain at about existing levels. For this reason, we have not prepared a full regulatory evaluation.

Regulatory Flexibility Act

The Department certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Obviously, the DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals. However, the proposed revision, while improving program administration and facilitating DBE participation (e.g., by making the certification process clearer), would not impose new costs on small entities. For this reason, it has not been necessary to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

The NPRM contains one new item (concerning personal financial statements to be submitted by applicants for DBE certification) and modifications of two existing items (concerning DBE application forms and recipients' data reporting forms) that are subject to OMB review under the Paperwork Reduction Act. These items would not go into effect until OMB clearance is obtained.

Federalism

The proposed regulation would not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT financial assistance programs, the proposal would not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23.

Issued this 16th day of November, 1992, at Washington, DC.

Andrew H. Card, Jr.

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend Subtitle A of Title 49 as follows:

Title 49 of the Code of Federal Regulations Part 23 is revised to read as follows:

PART 23—PARTICIPATION BY DISADVANTAGED ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.
23.1 Purpose.
23.3 Applicability.
23.5 Definitions.
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Authority: Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991; Section 511 of the Airport and Airway Improvement Act of 1982, as amended.

Subpart A—General

§ 23.1 Purpose.

(a) The purpose of this Part is to carry out the statutes establishing the Disadvantaged Business Enterprise (DBE) program in the Department's Federal-aid highway program, Federal transit assistance program, and airport grant program.

(b) This part is also intended to carry out the statutory requirement that, to the maximum extent practicable, at least ten percent of certain concession businesses are DBEs at airports receiving Federal grant funds.

(c) The Department's DBE program is intended to provide appropriate flexibility to recipients of Federal assistance in establishing and meeting DBE goals, using a variety of means toward that end.

§ 23.3 Applicability.

(a) This Part applies to all DOT financial assistance in the following categories that recipients expend in DOT-assisted contracts:

(1) Federal-aid highway funds authorized by title I and section 202 of Public Law 100-17.

(2) Federal transit funds authorized by title I or title III of Public Law 100–17 or by the Federal Transit Act of 1964, as amended:

(3) Airport funds authorized by the Airport and Airway Improvement Act of 1982 (AAIA), as amended.

(b) Subpart D of this part applies to any sponsor that has received a grant for airport development authorized by the Airport and Airway Improvement Act of 1982, as amended.

(c) This part does not apply to federally-assisted contracts to be performed entirely outside a state of the United States, the District of Columbia, or Puerto Rico.

§ 23.5 Definitions.

Affiliate has the meaning given the term in regulations of the Small Business Administration (SBA; 13 CFR 121.401).

Business opportunity means an opportunity to obtain property rights by lease or otherwise in an FTA recipient's facilities or equipment for the purpose of operating a transit-related activity, for the provision of goods or services, or for the purpose of conducting any other authorized commercial activity.

Compliance means the condition existing when a recipient has properly implemented and met the requirements of this Part and its approved DBE program.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or

subcontract (at any tier), in any program to which this Part applies.

Department or *DOT* means any U.S. Department of Transportation, including the Office of the Secretary and the operating administrations.

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a corporation, at least 51 percent of the stock of which is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor which if funded in whole or in part with DOT financial assistance, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this Part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and shares in the control, management, risks, and profits of the joint venture to a degree commensurate with its ownership interest.

Noncompliance means the condition existing when a recipient has not properly implemented and met the requirements of this part.

Operating Administration means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The Administrators of the operating administrations include their designees.

Primary recipient is a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Program means any undertaking by a recipient to use DOT financial assistance.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, for any program, or which has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121). However, notwithstanding meeting SBA small business standards, a firm that exceeds the currently applicable cap on average annual gross receipts established by DOT notice in the **Federal Register** is not a small business concern for purposes of this part.

Socially and economically disadvantaged individuals means individuals who are citizens (or lawfully admitted permanent residents) and who are:

(1) Individuals in the following groups, who are rebuttably presumed to be socially and economically disadvantaged:

(i) *Black Americans,* which includes persons having origins in any of the Black racial groups of Africa;

(ii) *Hispanic Americans,* which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) *Native Americans,* which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) *Asian-Pacific Americans,* which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati; Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) *Subcontinent Asian Americans,* which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(2) Any individual, not a member of one of these groups, who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

§ 23.7 Discrimination prohibited.

No persons shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

§ 23.9 Exemptions and interpretations.

(a) The administrators of FHWA, FTA, and FAA, or their designees, may issue written interpretations of or written guidance concerning this Part. Such interpretations are issued only with the concurrence of the Department's DBE Program Council or its designated representative. Such interpretations shall be deemed valid and binding only if they contain the following statement:

This interpretation of 49 CFR Part 23 has been reviewed by the Department of Transportation's DBE Program Council for consistency with the language and intent of Part 23. The DBE Program Council concurs in its issuance and its application to parties subject to all Department of Transportation disadvantaged business enterprise regulations.

(b) FHWA, FTA, and FAA may grant exemptions from specific requirements of this Part, upon written request from any regulated party. No waivers, exemptions, or exceptions to the provisions of this Part shall be granted except as provided in this paragraph.

(1) The basis for any grant of an exemption shall be special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this Part, that make compliance with a specific provision of this Part impracticable. Any grant of an exemption shall be conditioned on the regulated party taking specified practicable steps to comply with the intent of the provision from which an exemption is granted.

(2) All grants or denials of requests for exemption shall be in writing, and shall be issued only with the concurrence of the Department's DBE Program Council or its designated representative. Such grants or denials shall be deemed valid and binding only if they contain the following statement:

This response to a request for an exemption from 49 CFR Part 23 has been reviewed by the Department of Transportation's DBE Program Council for

consistency with the language and intent of Part 23. The DBE Program Council concurs in its issuance.

(c) The DBE Program Council or its designated representative may issue interpretations of and guidance concerning this Part.

§ 23.11 Reporting requirement.

Recipients shall report to the concerned operating administration data concerning DBE participation in their DOT-assisted contracts. These reports shall be made quarterly, unless another frequency is established by the Administrator of the concerned operating administration.

Subpart B—DBE Programs

§ 23.21 Assurances.

(a) Each financial assistance agreement between a DOT operating administration and a recipient, or between a primary recipient and another recipient, shall include the assurance set forth in this paragraph. This requirement applies regardless of whether the recipient or subrecipient involved is required to have a DBE program under § 23.23 of this part.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract. The recipient shall take all necessary and reasonable steps under 49 CFR part 23 to ensure that eligible disadvantaged business enterprises (DBEs) have the maximum feasible opportunity to participate in DOT-assisted contracts. The recipient's DBE program, if required by 49 CFR part 23 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 23.

(b) Each contract between a recipient, subrecipient, or contractor and a contractor or subcontractor shall include the assurance set forth in this paragraph. This requirement applies regardless of whether the recipient or subrecipient involved is required to have a DBE program under § 23.23 of this Part.

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The requirements of 49 CFR part 23 and the recipient's DOT-approved DBE program (where required) are incorporated in this contract by reference. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§ 23.23 DBE program requirement.

(a) Recipients in the following categories who let DOT-assisted contracts shall implement a DBE program containing the elements set forth in §§ 23.25–39, 23.51, 21.53, and 23.57(b) of this Part.

(1) All FHWA recipients;

(2) FTA recipients that receive $250,000 or more per year in FTA financial assistance.

(3) FAA recipients that receive $200,000 or more per year in FAA financial assistance.

(b) A recipient subject to the requirement to have a DBE program shall submit its program for approval to the DOT operating administration providing the greatest amount of its DOT financial assistance. Recipients shall also submit for approval significant changes in their programs. Recipients shall submit an update/progress report annually or whenever approval is sought for a significant program change. A DBE program approved by one DOT element is deemed to be approved by all DOT elements providing financial assistance to the recipient.

(c) A recipient required to have a DBE program is not eligible to receive DOT financial assistance unless its DBE program has been approved by DOT and it is in compliance with its program and this part.

(d)(1) A recipient that becomes subject to the requirement to have a DBE program shall continue to apply the program to contracts under all subsequent grants, regardless of the amount of those grants.

(2) A recipient subject to the requirement to have a DBE program shall continue to implement its program until all funds from DOT financial assistance have been expended.

§ 23.25 DBE directory.

Each recipient shall maintain and make available to interested persons a directory identifying eligible DBEs. The listing for each firm shall include its address, phone number, the types of work the firm prefers to perform and its preferred locations (if any) for performing the work. It may include additional relevant information at the recipient's discretion. Recipients shall update the directory at least annually.

§ 23.27 Certification process.

(a) Recipients shall ensure that only firms certified as eligible DBEs under this section participate as DBEs in their programs.

(b) Recipients shall determine the eligibility of firms as DBEs consistent with the standards of § 23.29 of this part.

(c) Recipients shall take at least the following steps in determining whether a DBE firm meets the standards of § 23.29:

(1) Perform an on-site visit to the offices of the firm. The principal officers of the firm shall be personally interviewed and their résumés and/or work histories reviewed. The recipient shall also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the recipient's jurisdiction or local area. Where the firm is located outside the geographic area in which the recipient normally operates, the recipient may rely on the facts in reports of on-site visits performed by other DOT recipients.

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require each disadvantaged owner of the firm to submit a statement of personal net worth, consistent with SBA regulations (see 13 CFR 124.106(a));

(8) Require potential DBEs to complete and submit an appropriate application form. The application form shall be similar to or a reproduction of the model provided in appendix A. The statement shall either be in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The recipient shall review this form prior to making a decision about the eligibility of the firm.

(d) After a firm is certified, the firm shall notify the recipient in writing of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part. The firm shall provide the notification within 30 days of its occurrence. Failure by the firm to make timely notification of a significant change affecting its

ownership and control shall be deemed a failure to cooperate under § 23.67(c) of this part.

(e) The recipient shall conduct a recertification review of each DBE firm it has certified at least once every two years.

(1) At the time of the recertification review, the firm shall submit a sworn statement setting forth any changes in the firm that may affect its eligibility. Supporting documentation describing in detail the nature of such changes shall be attached to the statement. If no changes have taken place since the previous certification or recertification, the sworn statement shall so recite.

(2) The recipient may request, and the firm shall provide, any additional information relevant to the recertification review.

(3) The firm subject to the recertification review shall remain certified unless and until the recipient removes its eligibility, following the procedures of § 23.53 of this part.

(f)(1) No later than three years from the effective date of this section, each recipient shall participate in a unified statewide certification program that DOT has approved. States may join a multistate regional unified certification program, at their discretion. Such a program shall make all certification decisions on behalf of and binding on all DOT recipients in the state or multistate region, with respect to participation in the DOT DBE Program.

(2) Beginning three years from the effective date of this section, each unified certification program shall process an application for certification from a firm from outside its jurisdiction only if the firm has previously been certified in the unified certification program for the jurisdiction in which it has its home office.

(3) A unified certification program may accept the certification of a firm from the unified certification program for the jurisdiction in which the firm has its home office. A unified certification program accepting the certification of another unified certification program shall assume responsibility for taking all appropriate actions with regard to that firm.

(4) All certifications by unified certification programs shall be pre-certifications; i.e., certifications which take place before the issuance of a solicitation for a contract on which a firm seeks to participate as a DBE.

(5) Unified certification programs shall make decisions on applications for certification within 60 days of receiving from the applicant firm all information required under this section.

(g) A recipient or unified certification program may, but is not required to, accept certifications made by other DOT recipients or unified certification programs. A recipient or unified certification program accepting the certification of another recipient or unified certification program shall assume responsibility for taking all appropriate actions with regard to that firm. Recipients or unified certification programs may enter into written reciprocity agreements with other DOT recipients or unified certification programs. Such an agreement shall outline the specific responsibilities of each participant.

§ 23.29 Certification standards.

(a) *General.* (1) In determining whether to certify a firm as eligible to participate as a DBE in DOT-assisted programs under this Part, recipients shall apply the standards of this section.

(2) The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, group membership (see paragraph (b)), business size (see paragraph (c)) ownership (see paragraph (g)) and control (see paragraph (h)).

(3) Members of the designated groups are rebuttably presumed to be socially and economically disadvantaged.

(4) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted (see paragraph (d)), have the burden of demonstrating, by a preponderance of the evidence, that they are socially and economically disadvantaged (see paragraph (f)).

(5) Recipients shall make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole. It is inappropriate, in most instances, for recipients to make certification decisions based on any single factor.

(b) *Group membership.* Where the recipient has a reasonable doubt whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, the recipient may require the individual to demonstrate that he or she is a member of the group. In making such determinations, recipients shall take into account such factors as whether the person has held himself or herself out to be a member of the group, whether the person is regarded as a member of the group by the relevant minority community, whether the person's appearance, ancestry, language, and pattern of activity, as applicable, are consistent with group membership. In making these determinations, the recipient shall use the provisions of SBA regulations at 13 CFR 124.105.

(1) If the recipient determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of the group, the individual must demonstrate social and economic disadvantage on an individual basis (see paragraph (f)).

(2) A decision by the recipient concerning membership in a designated group is subject to the certification appeals procedure of § 23.55.

(c) *Business size.*

(1) A firm (including its affiliates) must be an existing, operational small business, as defined by Small Business Administration (SBA) standards. Recipients shall apply the current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts; and

(2) A firm (including its affiliates) must not have average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the past three fiscal years, in excess of the current maximum level established by the Secretary.

(d) *Social and economic disadvantage.*

(1) Citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, rebuttably presumed to be socially and economically disadvantaged individuals. If the statement of personal net worth of an owner of the firm who is presumed to be economically disadvantaged shows that the individual's personal net worth (as defined in SBA regulations, 13 CFR 124.206) exceeds $750,000, the recipient shall regard the presumption of social and economic disadvantage as having been rebutted. In this case, the owner must demonstrate to the recipient that he or she is socially and economically disadvantaged on an individual basis (see paragraph (f)).

(e) *Section 8(a) Firms.* (1) If a firm applying for certification has a current, valid certification from the SBA under the section 8(a) program, it shall be presumed to be eligible for the DBE program, subject to demonstrating that it meets the average annual gross receipts

limit referenced in paragraph (a)(2) of this section and that it meets SBA business size criteria for the type(s) of work it seeks to perform in the recipient's DBE program. If the firm does not meet these requirements, it is not an eligible DBE, even though it has a valid 8(a) certification from SBA.

(2) Consistent with this presumption, recipients shall not require 8(a) firms to provide information, as part of the initial certification process, beyond what is necessary for purposes of the DBE directory (see § 23.25), related to ownership, control, or social and economic disadvantage. The recipient may require the firm to provide information to demonstrate that it meets the average annual gross receipts limit and that it meets SBA small business size criteria for the types of contracting it expects to perform in the recipient's DBE program.

(3) If a recipient has doubts about the ownership, control, or disadvantaged status of an 8(a) firm, the recipient shall bring its concerns to the attention of the SBA and request a response from the SBA. The recipient may initiate a proceeding to remove eligibility under § 23.53 of this part, including in the record and taking into account any response received from SBA.

(f) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. The recipient shall make a case-by-case determination of whether such an individual is socially and economically disadvantaged. In making these individual determinations, recipients shall implement the provisions of relevant SBA regulations relating to social and economic disadvantage (13 CFR 124.105(c) and 124.106(b)).

(g) *Ownership.* To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51% of the combined total of all classes of stock. In determining whether the socially and economically disadvantaged participants in a firm own the firm, the recipient shall look at all relevant facts as a whole. It is inappropriate, in most instances, for recipients to make ownership decisions based on any single factor.

(1) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(2) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities held in trust, or by any guardian for a minor, shall be considered as held by disadvantaged persons in determining the ownership of a firm. However, securities held in trust shall be regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(i) The beneficial owner of securities held in trust (including in a "living trust") is a disadvantaged individual, and the trustee is the same or another such individual; or

(ii) The beneficial owner, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm.

(3) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as a paid employee. Debt instruments from financial institutions or other organizations which lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(4) The recipient may consider the following factors in determining the ownership of a firm. However, a contribution of capital is not regarded as failing to be real and substantial, and a firm is not ineligible solely because a socially and economically disadvantaged individual acquired his or her ownership interest—

(i) Through a transfer from another socially and economically disadvantaged individual;

(ii) Through a division of property or settlement agreement in a divorce action, provided that no term or condition of the agreement or divorce decree is inconsistent with this section;

(iii) Through inheritance, or otherwise due to the death of the former owner; or

(iv) Through a gift (including a gift of funds used to acquire the interest in the firm).

(5) The recipient shall apply the following rules in situations in which marital assets, or assets transferred from one spouse to another, form a basis for ownership of a firm:

(i) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the recipient shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled.

(ii) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm shall be included as part of the firm's application for DBE certification.

(iii) In the following cases, the recipient shall give heightened scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual:

(A) When assets of one spouse held in that spouse's sole ownership are used to acquire an ownership interest in a firm asserted by the other spouse;

(B) When the firm in question, or its assets, are transferred from one spouse to the other.

(6) The co-signature of one spouse on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents shall not constitute a ground to find a potential DBE firm ineligible, if the firm is otherwise owned and controlled by the other spouse consistent with the standards of this section.

(7) In situations in which expertise is relied upon as the contribution to acquire ownership, the expertise must be in areas critical to the firm's operations, specific to the type of work the firm performs, and documented in the records of the firm. The records must clearly show the contribution of expertise and its value to the firm.

(h) *Control.* In determining whether the socially and economically disadvantaged participants in a firm control the firm, the recipient shall look at all relevant facts as a whole. It is inappropriate, in most instances, for

recipients to make control decisions based on any single factor.

(1) A DBE must be an independent business. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(i) In determining whether a potential DBE is an independent business, recipients shall scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(ii) The recipient shall consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms substantially compromise the independence of the potential DBE firm.

(iii) The recipient shall examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor substantially compromises the independence of the potential DBE firm.

(iv) In considering factors related to the independence of a potential DBE firm, recipients shall consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(2) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There shall be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts) which prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature as provided for in paragraph (c)(6) of this section.

(3) The socially and economically disadvantaged owners shall possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. Non-disadvantaged owners of the firm shall not be disproportionately responsible for the operation of the firm.

(i) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to management and non-management employees, regardless of whether these employees are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any employee to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(ii) The socially and economically disadvantaged owners must have an overall understanding of the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently use and critically evaluate information presented by employees of the firm concerning its daily operations, management, and policymaking.

(iii) If state or local law requires the persons owning and controlling a certain type of firm to have a license or other formal credential, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law do not require such a person to have such a license or credential to own and control a firm, the recipient shall not deny certification solely on the ground that the person lacks the license or credential. However, the recipient may take into account the absence of a license or credential as one factor in determining whether the socially and economically disadvantaged owners actually exercise control over the firm.

(iv) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as managers, stockholders, officers, and/or directors. Such individuals may not, however, possess or exercise the power to control the firm.

(v) If a recipient considers differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a potential DBE, it shall do so in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm.

(vi) The fact that a member of the family of a socially and economically disadvantaged owner of a firm participates in the firm as a manager, employee, owner board member, does not, in itself, indicate that the owner fails to control the firm. In considering the firm's eligibility, the recipient shall make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as it does in other situations, without regard to whether or not the other persons are family members.

(i) *Other certification considerations.* (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms which have already been certified as DBEs. Except as provided in paragraph (2) of this paragraph, recipients shall not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) A recipient may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program or other DOT federally assisted programs.

(3) Recipients shall evaluate the eligibility of a firm in light of present circumstances. Recipients shall not decline to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(4) Firms seeking DBE certification shall cooperate fully with requests by recipients for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial of certification.

(5) A small business concern which is 51 percent owned and controlled by one or more certified DBE firms is itself an eligible DBE, if it meets the business size and other eligibility criteria of this part.

(6) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(7) A firm owned by an Indian tribe recognized by the Department of the Interior or an Alaskan Native Corporation may be regarded as owned by socially and economically disadvantaged individuals, notwithstanding the fact that ownership may formally reside in the tribe or corporation as an entity, rather than in individual members of the tribe. Such a firm must meet the control and business size criteria of this section in order to be an eligible DBE.

§ 23.31 Overall goals.

(a) Recipients are required to establish overall goals and shall calculate them as follows:

(1) For FHWA recipients, as a percentage of all Federal-aid highway funds the recipient will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) For FTA and FAA recipients, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that the recipient will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit a recipient to express its overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(b) In setting overall goals, recipients shall consider the following factors:

(1) Overall goals shall be based on the number and types of contracts to be awarded by the recipient and the number and types of DBEs likely to be available to work on the contracts during the period covered by the goal.

(2) The recipient shall use its past performance in setting and meeting DBE overall goals as a guide for establishing reasonable expectations for future overall goals.

(c)(1) Recipients setting overall goals on a fiscal year basis shall submit them to the applicable DOT operating administration for approval 60 days before the beginning of the Federal fiscal year to which the goal applies, or at another time determined by the Administrator of the concerned operating administration.

(2) An FTA or FAA recipient setting overall goals on a project or grant basis shall submit the goals at a time determined by the FTA or FAA Administrator.

(3) Submissions of overall goals shall include a description of the methodology used to establish the goals and the reasons for selecting the particular goal submitted.

(d) The recipient shall submit its overall goal to the Administrator of the applicable operating administration for approval. The Administrator considers whether the goal represents a reasonable expectation for DBE participation in the recipient's DOT-assisted contracts, based on such factors as stated in paragraph (b) of this section, existing DBE capacity and the recipient's efforts to develop the capacity of available DBEs.

(e) If a recipient submits an overall goal of less than ten percent, it shall take the following additional steps:

(1) Ensure that the submission is signed or concurred in by the Governor (with respect to a state transportation agency), Mayor or other responsible elected official (with respect to a local mass transit agency), or the responsible elected official or head of the board (with respect to an airport operator).

(2) Consult with minority and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses and the recipient's efforts to increase the participation of such businesses. If it appears to the Administrator of the concerned operating administration that the recipient has failed to consult adequately with relevant persons or organizations, the Administrator may direct the recipient to do so, prior to approving the goal.

(3) Submit with its request for approval for a goal of less than ten percent a justification including the following elements:

(i) The recipient's efforts to locate DBEs;

(ii) The recipient's efforts to make DBEs aware of contracting activities;

(iii) The recipient's initiatives to encourage and develop DBEs;

(iv) Legal or other barriers impeding the participation of DBEs at a level of at least ten percent in the recipient's DOT-assisted contracts and the recipient's efforts to overcome or mitigate the effects of these barriers;

(v) The availability of DBEs to work on the recipient's DOT-assisted contracts;

(vi) A summary of the views and information concerning the availability of DBEs and the adequacy of the recipient's efforts to increase DBE participation provided during the consultation required by paragraph (d)(2) of this section.

(f)(1) The Administrator of the concerned operating administration accepts a recipient's request for approval of a goal of less than ten percent if he/she determines that—

(i) The recipient is making all appropriate efforts to increase DBE participation in its DOT-assisted contracts to a level of at least ten percent;

(ii) Despite these efforts, the recipient's requested goal represents a reasonable expectation for the participation of DBEs in its DOT-assisted contracts, given the availability of DBEs to work on these contracts.

(iii) The steps required by paragraph (d) of this section have been taken.

(2) Before acting on a request to approve a goal of less than ten percent, the Administrator of the concerned operating administration shall provide the Director of the DOT Office of Small and Disadvantaged Business Utilization the opportunity to review and comment on the request.

(g)(1) If the Administrator of the concerned operating administration does not approve the recipient's requested goal under paragraph (d) or (e) of this section, the Administrator shall provide to the recipient a written explanation of his/her decision.

(2) When the Administrator does not approve the recipient's requested goal, the Administrator, after consulting with the recipient, shall establish an adjusted overall goal. The adjusted overall goal represents the Administrator's determination of a reasonable expectation for the participation of DBEs in the recipient's DOT-assisted contracts, and is based on the information provided by the recipient in its submission and other information available to the Administrator. The adjusted overall goal shall be binding on the recipient.

(h) The Administrator may condition the approval of an overall goal on any reasonable future action by the recipient.

(i) At the time the recipient submits its overall goals to the Department for approval, the recipient shall publish a notice announcing these goals, informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the recipient for 30 days following the date of the notice, and informing the public that the Department and the recipient will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications, and shall state that the comments are for informational purposes only.

(j) Failure to have an approved overall goal is noncompliance by a recipient with the requirements of this Part. A

recipient that does not have an approved overall goal is not eligible to receive Federal financial assistance from FHWA, FTA, or FAA.

(k) If a recipient fails to meet an approved overall goal, it shall have an opportunity to make an explanation to the Administrator of the concerned Operating administration why the goal could not be achieved and why meeting the goal was beyond the recipient's control.

(l)(1) If the recipient does not make such an explanation, or the explanation does not justify the failure to meet the goal, the Administrator may direct the recipient to take remedial action. Failure to take such remedial action is noncompliance with this Part.

(2) Before the Administrator determines whether an explanation justifies a recipient's failure to meet its goal, the Director of the Office of Small and Disadvantaged Business Utilization shall have an opportunity to review and comment on the recipient's explanation.

§ 23.33 Contract goals.

(a) The recipient shall establish a DBE contract goal on each prime contract with DBE subcontracting possibilities, regardless of whether the recipient has met its overall goal for the year or for a grant or project. The goal shall be calculated on the basis of the entire amount of the contract (i.e., both the state/local and Federal share of the contract).

(b) Recipients are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by its overall goal, the recipient shall ensure that its contract goals are set so that, if met, they will cumulatively result in the recipient meeting its overall goal.

(c) Each FTA recipient shall establish a DBE participation goal for each business activity afforded through leases or concessions involving the use of the recipient's facilities or equipment, notwithstanding the fact that such opportunities do not involve the expenditure of Federal funds and therefore are not included in the recipient's overall goal.

(d) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal established by a recipient, at the operating administration's discretion.

§ 23.35 Good faith efforts.

(a) The recipient shall award a contract only to a contractor which meets the DBE contract goal or demonstrates that it has made good faith efforts to do so.

(b) All solicitations for DOT-assisted contracts for which a contract goal has been established shall inform competitors for the contract that—

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders shall be required to submit the following information with bids/proposals for contracts, as a matter of responsiveness:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) If the contract goal is not met, evidence of good faith efforts.

(c) If the DBE participation submitted by the bidder/offeror does not meet the contract goal, the recipient shall determine whether the bidder/offeror's good faith efforts are adequate. In making this determination, the recipient uses appendix B to this part.

(d) The recipient shall ensure all information is complete and accurate and adequately documents the competitor's good faith efforts before the recipient commits itself to the performance of the contract bidder/offeror.

(e) Recipients are required to use the good faith efforts mechanism of this section as the means of ensuring that contract goals are met and may not, except as provided in paragraph (f) of this section, use more stringent contract award mechanisms for DOT-assisted contracts.

(f) Nothing in this part prohibits a recipient with its own legal authority to employ set-asides from using a DBE set-aside on a DOT-assisted contract. This part does not provide independent legal authority to employ set-asides. Recipients shall not use group-specific set-asides on DOT-assisted contracts.

(g)(1) Recipients shall require that each prime contractor have a written subcontract, letter of intent, or other writing memorializing its commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.

(2) Recipients shall require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) unless the DBE is in breach of its contract with the prime contractor. Such a termination shall not take place without prior written notice to the recipient.

(3) When a DBE subcontractor is terminated, the recipient shall require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform the same amount of work under the contract as the DBE that was terminated, regardless of whether the prime contractor's DBE participation percentage is above or below the contract figure committed to at contract award.

(4) The recipient shall include in each prime contract a liquidated damages clause or penalty provision that the recipient shall invoke if the prime contractor fails to comply with the requirements of this paragraph.

§ 23.37 Counting DBE participation.

(a) Except as otherwise provided in this section, the full dollar value of a contract with a DBE is counted toward DBE goals.

(b)(1) The entire fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant or managerial services, are counted toward DBE goals, provided that they are determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The entire fees or commissions charged by a DBE firm for providing bonds or insurance specifically required for the performance of a DOT-assisted contract are counted toward DBE goals, provided that they are determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(c) When a DBE performs as a partner in a joint venture, a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs is counted toward DBE goals.

(d) Expenditures to a DBE contractor may be counted toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE

must be responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract. To determine whether a DBE is performing a commercially useful function, the recipient shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under to contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) If, consistent with state and local law and industry practices, a DBE enters into lower tier subcontracts, the following rules apply:

(i) If a DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE shall be presumed not to be performing a commercially useful function.

(ii) Any portion of the value of the contract that a DBE subcontractor subcontracts back to the prime contractor or an affiliate of the prime contractor shall not be counted toward DBE goals.

(iii) In the FHWA program, if a DBE does not perform at least 30 percent of the total cost of its contract with its own work force, it shall be presumed not to be performing a commercially useful function.

(iv) When a DBE in the FHWA program is presumed not to be performing a commercially useful function as provided in paragraph (d)(2)(iii) of this section, the DBE may present evidence to rebut this presumption to the recipient. The recipient may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. This determination is subject to review by the FHWA Administrator.

(3) The performance of such specified work and the appropriate compensation for that work, whether it is performed by a prime contractor, subcontractor (at whatever tier) or lessor, shall be part of a formally executed written agreement between the contracting parties. The recipient's DBE program shall set forth a monitoring and enforcement mechanism to verify that the work committed to the DBE at contract award is actually performed by the DBE and that the DBE is duly compensated for the performance of the work, before counting that work toward DBE goals.

(e) Expenditures with DBEs for materials or supplies are counted toward DBE goals as provided in this paragraph:

(1) (i) If the materials or supplies are counted from a DBE manufacturer, 100 percent of the cost of the materials or supplies are to be counted toward DBE goals.

(ii) For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials or supplies in question.

(2) (i) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies may be counted toward DBE goals.

(ii) For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and under its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, or asphalt need not keep such products in stock, if it owns or operates distribution equipment. The supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an on *ad hoc* or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or persons who arrange or expedite transactions shall not be regarded as regular dealers within the meaning of this paragraph, unless they also meet the standards of this paragraph.

(3) If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, credit toward DBE goals may be counted as follows:

(i) The entire fees or commissions charged for assistance in the procurement of the materials and supplies are counted toward DBE goals, provided that they are determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves may be counted toward DBE goals, however.

(ii) The entire fees charged for the delivery of materials or supplies required on a job site are counted toward DBE goals, provided that they are determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves may be counted toward DBE goals, however.

(4) The dollar value of a contract with a firm whose eligibility has been removed may not be counted toward the recipient's overall goal.

(f) If a firm has not been certified by the recipient as a DBE, or if the recipient's certification procedures, as applied to the firm, do not comply with the requirements of this Part, the firm's participation may not be counted toward DBE goals.

(g) The participation of a DBE subcontractor shall not be counted toward the prime contractor's goal until the amount being counted toward the goal has been paid to the DBE.

§ 23.39 Additional program elements.

Recipients required by § 23.23 of this part to have a DBE program shall incorporate into their DBE programs and implement the following additional elements:

(a) The recipient shall issue a policy statement which expresses the organization's commitment to the program, states its objectives, and outlines responsibilities for its implementation. The recipient shall circulate the statement throughout its organization and to the DBE and non-DBE business communities.

(b) The recipient shall have a DBE liaison officer, who shall have direct, independent access to the Chief Executive Officer of the organization with respect to DBE program matters. The liaison officer shall be responsible for implementing all aspects of the recipients' DBE program. The recipient shall have adequate staff to administer the program.

(c) The recipient shall develop and use techniques to facilitate DBE participation, including but not limited to the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate DBE participation;

(2) Providing assistance to DBEs in overcoming limitations such as inability to obtain bonding or financing;

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities in a timely manner, with such information being made available in languages other than English where appropriate; and

(5) Taking appropriate steps to encourage diversity in the types of work performed by DBEs and the performance of prime contracts as well as subcontracts by DBEs (e.g., incentives for the participation of DBEs in fields other than speciality subcontracting

fields in which DBEs have traditionally participated).

(d) The recipient shall thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community and make reasonable efforts to use these institutions. Recipients shall also encourage prime contractors to use such institutions.

(e) The recipient's DBE program shall include a monitoring and enforcement mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBE and that the DBE is duly compensated for the performance of the work.

(f) The recipient shall establish, as part of its DBE program, a mechanism to ensure that DBE subcontractors are promptly and fully paid, and otherwise treated fairly and equitably, by prime contractors. The recipient shall include appropriate clauses in its contract documents to ensure that the mechanism is contractually binding on all parties involved. The mechanism shall include one or more of the following provisions:

(1) A procedure for alternative dispute resolution to resolve disputes between prime contractors and DBE subcontractors, including but not limited to issues concerning payment of DBE subcontractors;

(2) The inclusion in every prime contract of a prompt payment clause which obligates the contractor to pay the subcontractor for satisfactory performance of its contract no later than 10 days from receipt of payment out of such amounts as are paid to the contractor by the recipient in accordance with the contract's provisions. Any delay or postponement of the payment of funds among the contracting parties may take place only for good cause, with prior approval by the recipient. The prompt payment clause shall also provide for appropriate penalties for failure to comply, which shall be set and imposed at the recipient's discretion.

(3) A requirement that any delay or postponement of the payment of funds to DBE subcontractors by a prime contractor, as called for by the contract between them, may take place only for good cause, with prior approval by the recipient;

(4) A procedure through which payments owed to DBE subcontractors under their contracts with prime contractors shall be made directly by the recipient to the DBE subcontractors, rather than through the prime contractor; or

(5) A requirement that contractors not draw down funds due on work performed by DBE subcontractors except as needed to meet immediate cash disbursement needs, and that any such funds drawn down and not disbursed within seven calendar days be returned. All funds retained in excess of seven calendar days shall be required to be returned with interest due, calculated as of the date of the original withdrawal.

(g) The Administrator of an operating administration may direct recipients of its funds to establish a DBE development program to assist selected DBE firs in becoming able to compete in types of business outside narrow areas of specialization in which DBE firms have traditionally operated.

(1) To participate in this program, a DBE firm shall have been certified by the recipient for at least two years and shall have participated in at least one contract let by the recipient during that time.

(2) To participate in this program, a DBE firm shall be determined by the recipient to have as its primary area of operation one of the specialized areas of business traditionally performed by DBEs and to be capable, with business development assistance, of competing successfully in one or more areas of business not traditionally performed by DBEs.

(3) In providing business development assistance to DBE firms, recipients shall be guided by the provisions of Appendix C.

(4) As part of its business development program, a recipient may establish a "mentor-protege" program, in which another DBE or non-DBE firm is a principal source of business development assistance.

(i) Only DBE firms meeting the criteria of paragraphs (g) (1) and (2) of this section may participate in such a program.

(ii) To participate in a mentor-protege program, a DBE firm shall have participated during the preceding two years in at least one contract let by the recipient in which the mentor firm did not participate.

(iii) During the course of the mentor-protege relationship, the mentor firms shall not claim credit for using the protege firm for more than one half of its goal on any contract let by the recipient.

(iv) The mentor-protege program of a recipient shall be consistent with the guidelines in Appendix D.

(h) The recipient shall implement appropriate mechanisms to ensure compliance with the requirements of this Part by all participants in the program. The recipient shall include in its DBE program the contract provisions, enforcement mechanisms, or other means it uses to ensure compliance.

§ 23.41 Transit vehicle manufacturers.

(a) Each FTA recipient shall require, as part of its DBE program, that each transit vehicle manufacturer, as a condition of being authorized to bid on transit vehicle procurements in which FTA funds participate, certify that it has complied with the requirements of this section.

(b) Each manufacturer shall establish and submit for the FTA Administrator's approval an annual overall percentage goal. The base from which the goal shall be calculated is the amount of FTA financial assistance participating in transit vehicle contracts to be performed by the manufacturer during the fiscal year in question. Funds attributable to work performed outside the United States and its territories, possessions, and commonwealths shall be excluded from this case. The requirements and procedures of Subpart B with respect to submission and approval of overall goals apply to transit vehicle manufacturers as they do to recipients.

(c) A manufacturer may make the certification required by this section if it has submitted the goal this section requires and the FTA Administrator has approved it or not disapproved it.

Subpart C—Certification, Compliance and Enforcement Procedures

§ 23.51 Recipients' denials of initial requests for certification.

(a) When a recipient denies a request by a firm, which does not have a current certification from the recipient, to be certified as a DBE, the recipient shall provide to the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. Except as provided in paragraph (b) of this section, the time period for reapplication (see paragraph (c) of this section) shall begin on the date the explanation is received by the firm.

(b) A firm may, within 30 days of receiving this written explanation, submit evidence to the recipient that it has resolved the problems cited in the explanation for the denial of certification. The recipient shall provide to the firm, on request, an informal opportunity to be heard on the matter. If the recipient determines that the firm meets eligibility requirements, it shall certify the firm. If the recipient determines that the problems have not been resolved, the recipient shall provide a written explanation of its

determination to the firm. The time period for reapplication shall begin to run on the date the firm receives the explanation.

(c) When a firm is denied certification, the recipient shall establish a time period of no less than six and no more than twelve months that must elapse before the firm may reapply to the recipient for certification.

(d) A firm that is denied certification may appeal the denial to the Department under § 23.55 of this part.

§ 23.53 Recipients' proceedings to remove eligibility.

This section provides the procedures by which recipients resolve issues concerning the eligibility of DBE firms which are currently certified by the recipient, whether these issues are raised as the result of an ineligibility complaint, a DOT directive to suspend certification, a recertification review by the recipient, or other information coming to the attention of the recipient. Such issues include, but are not necessarily limited to, the ownership, control, socially and economically disadvantaged status, and size of the firm.

(a) *Ineligibility complaints.* (1) Any person may file with the recipient a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. A recipient is not required to accept a general allegation that a firm is ineligible and shall not accept an annonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities may be protected as provided in § 23.67(b) of this part.

(2) Promptly upon receipt of such a complaint, the recipient shall notify the firm, in writing, that a complaint challenging its eligibility has been filed and that the firm may provide written information and arguments concerning its eligibility. The notice shall specify the grounds on which the firm's eligibility is being questioned.

(3) The recipient shall review the administrative record, the material provided by the firm and the complainant, and other available information, and may conduct any additional investigation that it deems necessary.

(4) If the recipient determines, based on this review, the there is reasonable cause to believe that the firm is ineligible, the recipient shall provide written notice to the firm that the recipient proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the recipient determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on a recertification review or other information that comes to its attention, the recipient determines that there is reasonable cause to believe that a currently-certified firm is ineligible, or when there is a DOT directive to suspend certification under paragraph (c) of this section, the recipient shall provide written notice to the firm that the recipient proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to suspend certification.* (1) If FHWA, FTA, or FAA determines that information in the recipient's certification records, or other information available to the DOT agency, creates a substantial probability that a firm certified by a recipient does not meet the eligibility criteria of this part, the DOT agency may direct the recipient to suspend the firm's certification. During the period of suspension, the firm is not eligible to participate in the recipient's Federally-assisted contracts as a DBE.

(2) The DOT agency concerned shall provide to the recipient and the firm a notice setting forth the reasons for the suspension.

(3) The recipient shall immediately commence a proceeding to remove eligibility under paragraph (b) of this section. If the recipient finds, in this proceeding, that the firm is eligible, the suspension shall be lifted.

(d) *Hearing.* When a recipient notifies a firm that it has found reasonable cause to remove its eligibility, under paragraph, (a), (b) or (c) of this section, the recipient shall give the firm an opportunity for a hearing, at which it may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why the firm should remain certified.

(1) In such a proceeding, the recipient shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) If the social and economic disadvantage of the firm's owners is at issue in the proceeding, the recipient, in making its decision, shall use relevant SBA rules relating to social and economic disadvantage (13 CFR 124.105(c) and 124.106(b)).

(3) The recipient shall maintain a complete record of the hearing, either by transcript or an audio recording. If an audio recording is made, the recipient shall make a written transcription of the recording if there is an appeal to DOT under § 23.55 of this part.

(4) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, a decision by the recipient to remove the firm's eligibility must be based on a preponderance of the evidence that the firm no longer meets the eligibility standards of this part.

(e) *Separation of functions.* The decision in a proceeding to remove a firm's eligibility shall be made by an office or personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and which is not subject to direction from the office or personnel who did take part in these actions.

(f) *Grounds for decision.* A decision to remove eligibility shall not be based on a reinterpretation or changed opinion of information available to the recipient at the time of the most recent certification of the firm. Such a decision shall be based only on one or more of the following:

(1) Changes in the firm's ownership and control since the most recent certification of the firm by the recipient;

(2) Information or evidence not available to the recipient at the time of the most recent certification of the firm;

(3) Information that has been fraudulently concealed or misrepresented in previous certification reviews;

(4) A change in the certification standards or requirements of this part since the most recent certification of the firm by the recipient; or

(5) A documented finding that the recipient's previous determination that the firm was eligible was clearly erroneous.

(g) *Notice of decision.* Following the recipient's decision, the recipient shall provide the firm a letter setting forth the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice shall inform the firm of the consequences of the recipient's decision and of the availability of an appeal to the Department of Transportation.

(h) *Status of firm during proceeding.* Except as provided in paragraph (c) of this section, a firm remains an eligible DBE during the pendancy of a recipient's proceeding to remove eligibility. The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(i) *Effects of removal of eligibility.* When a recipient removes a firm's eligibility, the recipient shall take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, but a subcontract has not been executed, the recipient shall inform the prime contractor that the ineligible firm does not count toward the contract goal. The recipient shall direct the prime contractor to meet the contract goal or demonstrate good faith efforts to the recipient.

(2) If a prime contractor has executed a subcontract with the ineligible firm, the remaining portion of the ineligible firm's performance of the contract shall not count toward the contract goal. The recipient shall direct the prime contractor to make good faith efforts to use an eligible DBE to make up that portion of the goal.

(3) The recipient shall include appropriate provisions in all DOT-assisted prime contracts and subcontracts, and solicitations for them, to ensure that the requirements of paragraphs (i) (1) and (2) of this section may be carried out in accordance with the laws and regulations governing the recipient's procurement activities.

(4) Only participation by an eligible DBE firm may be counted toward a recipient's DBE overall goal. Participation by a firm as a subcontractor, as a direct contractor to the recipient, or in any way after its eligibility has been removed may not be counted toward a recipient's overall DBE goal.

§ 23.55 Administrative appeals to the Department of Transportation.

(a)(1) Any firm which is denied certification or whose eligibility is removed by a recipient may make an administrative appeal to the Department.

(2) Any complainant in an ineligibility complaint to a recipient (including a DOT agency in the circumstances provided in § 23.53(c)) may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect.

(c) The appeal shall be made by letter within 90 days of the date of the recipient's decision and shall include information and arguments concerning why the recipient's decision should be reversed.

(1) Letters of appeal from a firm which has been denied certification or whose certification has been removed, or before owner is determined not to be a member of a designated disadvantaged group or concerning which the presumption of disadvantage has been rebutted, shall state the names of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending.

(2) In the case of an ineligibility complaint filed with a recipient, the Department shall request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section.

(d) When it receives an appeal, the Department shall request a copy of the recipient's complete administrative record in the matter. The recipient shall provide the administrative record, including a hearing transcript, within 30 days of the Department's request.

(e) The Department shall make its decision based solely on the administrative record. The Department does not make a *de novo* review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration; a recipient; or a firm or other private party. When the recipient provides supplementary information to the Department, the recipient shall also make this information available to the firm and any third-party complainant involved. The Department shall make available to the firm, on request, to the firm and any third-party complainant involved, any supplementary information it receives from any source.

(f)(1) The Department shall affirm the recipient's decision if it determines, based on the administrative record, that the recipient's decision is supported by substantial evidence and that its decision is consistent with the substantive and procedural requirements of this part.

(2) If the Department determines, after reviewing the record, that the recipient's decision is not supported by substantial evidence or is inconsistent with the substantive or procedural requirements of this Part, the Department shall reverse the recipient's decision.

(3) In considering actions by recipients that are allegedly inconsistent with procedural requirements of this part, the Department is not required to reverse the recipient's decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to the recipient with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to the recipient for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department may not uphold recipients' decisions based on grounds not specifically articulated in the recipients' decisions.

(6) The Department's decision shall be based on the status and circumstances of the firm as of the date of the recipient's decision which is being appealed.

(7) The Department shall make its decision within 60 working days of having received the complete record of recipient's proceeding.

(8) The Department shall inform the recipient, the firm, and the complainant in an ineligibility complaint, in writing of its decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

(9) The General Counsel concurs with each decision under this section prior to its issuance.

(g) All determinations under paragraph (d) of this section are administratively final, and shall not be subject to petitions for reconsideration.

§ 23.57 Effect of decisions.

(a) A determination under § 23.55 of this part shall be binding only on the recipient from whose action the appeal is taken. *Provided,* That in the case of a decision made by a unified state or regional certification program, the determination will be applicable throughout the state or region.

(b) The recipient to which a determination under § 23.55 of this part is applicable shall take the following action:

(1) If the Department determines that the recipient erroneously certified a firm, the recipient shall remove the firm's eligibility on receipt of the determination, without further proceedings at the recipient level. Effective on the date of the recipient's receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 23.53(g) shall attach to the firm.

(2) If the Department determines that the recipient erroneously failed to find reasonable cause to propose removing the firm's eligibility, the recipient shall expeditiously schedule a proceeding to determine whether the firm's eligibility should be removed, as provided in § 23.53(d) of this part.

(3) If the Department determines that the recipient erroneously declined to certify or removed the eligibility of the firm, the recipient shall certify the firm, effective on the date of the recipient's receipt of the Department's determination.

(4) If the Department affirms the recipient's determination, no further action by the recipient is necessary.

§ 23.59 Compliance with overall goal requirements.

Noncompliance with any requirement of this part may subject a recipient to formal enforcement action under §§ 23.61 or 21.63 of this Subpart or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with section 519 of the AAIA, as amended; and in the case of the FTA program, any actions permitted under the Federal Transit Act of 1964, as amended, or applicable FTA program requirements.

§ 23.61 Enforcement actions—FHWA and FTA programs.

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this Part may file a written complaint with the Department. The complaint shall be filed no later than 180 days after the date of the alleged violation or the date on which a continuing course of conduct in violation of this part became known to the complainant. The Secretary may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. Confidentiality of complainants' identities may be protected as provided in § 23.63(a)(1) of this Part.

(b) *Compliance reviews.* The Department may review the recipient's compliance with this Part at any time, including reviews of paperwork and on-site reviews, as appropriate.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that a recipient is in noncompliance with this part, the Department shall promptly send to the recipient, return receipt requested, a written notice advising the recipient that there is reasonable cause to find the recipient in noncompliance. The notice shall state the reasons for this finding and direct the recipient to reply within 30 days concerning whether it wishes to begin conciliation.

(d) *Conciliation.* (1) If the recipient requests conciliation, the Department shall pursue conciliation for at least 30, but not more than 120, days from the date of the recipient's request. The Department may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If the recipient and the Department sign a conciliation agreement, then the matter is regarded as closed and the recipient is regarded as being in compliance. The conciliation agreement shall set forth the measures taken or to be taken by the recipient to ensure its compliance with this part. While a conciliation agreement is in effect, the recipient remains eligible for FHWA or FTA financial assistance.

(3) The Department shall monitor the recipient's implementation of the conciliation agreement and ensure that its terms are complied with. Failure by the recipient to carry out the terms of a conciliation agreement is noncompliance with this part.

(4) If the recipient does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section then enforcement proceedings begin.

(e) *Enforcement proceedings.* (1) Enforcement proceedings are conducted in accordance with the Department's procedures for enforcing Title VI of the Civil Rights Act of 1964 (see 49 CFR 21.13–17).

(2) Findings and sanctions imposed in enforcement proceedings are binding on all operating administrations.

§ 23.63 Enforcement actions—FAA programs.

(a) Compliance with all requirements of this Part by airport sponsors and other recipients of FAA financial assistance is enforced through procedures of section 519 of the Airport and Airway Improvement Act of 1982, as amended, and regulations implementing section 519.

(b) The provisions of § 23.61(b) and § 23.65 apply to enforcement actions in FAA programs.

§ 23.65 Enforcement actions—Firms participating in the DBE program.

(a) *Suspension and debarment; Referral to Department of Justice.* (1) The Department may initiate suspension or debarment proceedings under 49 CFR part 29 with respect to any firm which does not meet the eligibility criteria of § 23.55 and which attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.

(2) The Department may initiate suspension or debarment proceedings under 49 CFR part 29 with respect to any firm which, in order to meet DBE contract goals, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm which does not meet the eligibility criteria of § 23.55.

(3) In a suspension or debarment proceeding brought under paragraph (a)(1) or (2) of this section, the Department, or an operating administration, may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(4) The Department may take enforcement action under 49 CFR part 31, implementing the Program Fraud and Civil Remedies Act, against any participant in the DBE program whose conduct is subject to such action under part 31.

(5) The Department may refer to the Department of Justice, for prosecution under the U.S. Criminal Code, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal criminal statutes.

(6) Each recipient shall, and any other person may, bring to the attention of the Department's Office of Inspector

General, or other appropriate Department officials, any information that could lead a reasonable person to believe that misconduct covered by this section is occurring or has occurred.

(b) *Suspension or revocation of certification for criminal conduct.* (1) In order to protect the integrity of the DBE program, the Department is authorized to suspend the DBE certification of a firm upon the issuance of a federal or state criminal indictment or information against a certified firm, or any owner, officer, director or management official thereof, in connection with conduct in the Department's DBE Program. The General Counsel shall concur in any such action. A DBE firm whose certification has been suspended pursuant to this section shall be ineligible to participate in the Department's DBE Program during the period of such suspension. *Provided,* That such a firm may be permitted to continue work as a DBE on a contract which has been executed prior to the date of the indictment or information. The suspension shall be lifted if and when the indictment or information is dismissed or the firm is acquitted of criminal charges.

(2) The Department shall immediately direct affected recipients to revoke the DBE certification of a firm upon conviction of an offense in connection with the Department's DBE Program by a federal or state court of a certified firm, or any owner, officer, director or management official thereof. The General Counsel shall concur with any such action. Said revocation shall result in a period of DBE ineligibility of 3 years.

(3) Each recipient shall immediately notify the Department in writing of any indictment, charging by information, or conviction of a DBE firm or any owner, officer, director or management official thereof.

§ 23.67 Miscellaneous provisions.

(a) *Availability of records.* In responding to requests for information concerning any aspect of the DBE program, the Department shall comply with provisions of the Freedom of Information Act and Privacy Act. Recipients shall comply with state or local legal requirements concerning the release of information.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant shall be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) shall cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts or suspension and debarment).

(d) *Intimidation and retaliation.* Recipients, contractors, and other persons shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Appendix A To Part 23—DBE Certification Form

BILLING CODE 4910-62-M

Disadvantaged Business Enterprise (DBE)
CERTIFICATION APPLICATION

Application is hereby made by the Individual (organization) identified bellow for certification as a disadvantaged business (DBE) enterprise under the U.S. Department of Transportation DBE program pursuant to 49 CFR 23. Socially and Economically Disadvantaged (SED) Individuals are presumed to be members of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Americans, Women and any groups so designated by the Small Business Administration (SBA). Applicants who are not one of the presumed groups must prove socially and economically disadvantage in accordance with 13 CFR 124.105.

Any person claiming SED status shall attach copies of a current Financial Statement prepared by an independent CPA or accountant. In adition a copy of one of the following documents must be submitted to prove membership in the ethnic group claimed:

Membership letter or certificate of ethnic organization - Tribal Certificate or Bureau of Indian Affairs Card - Birth Certificate/Record (including those of natural parents) - U.S. Passport - Armed Service Discharge Papers - Alien Registration Number - Any other document that provides evidence of ethnicity.

NOTE: For purposes of this application the following SED codes are to be used (B) Black Americans, (H) Hispanic Americans, (NA) Native Americans, (AP) Asian-Pacific Americans, (AS) Subcontinent - Asian Americans, (F) Female, (SBA) Other Groups Approved By SBA (O) Other.

Answer all questions. Indicate "N/A" if question does not pertain to your firm.

1. Name and Address of Company	2. Mailing Address (if Different)
3. Contact Person and Title	4. Telephone No.
5. Federal Identification Number	6. Other Identification Number Used

7. Has this firm been certified under Section 8(a) by the Small Business Administration? Yes __ No __
If certified attach a copy of the certification.

8. NATURE OF THE FIRM'S BUSINESS: -

_____

Identify only those areas for which you can provide a commercially useful function and still be competitive with firms in those areas. You are responsible for providing evidence of your firm's experience or ability to perform in these areas.

___Construction ___Professional Service ___ Supplier ___Manufacturer

9. Standard Industrial Classification (SIC) Code and applicable size standard for which the firm qualifies to do business (Refer to the small business size standard at 13 CFR 121)

SIC_____ Size_____ SIC_____ Size_____

SIC_____ Size_____ SIC_____ Size_____

10. List States in which the firm is authorized to do business.

11. LICENSES REQUIRED TO CONDUCT BUSINESS. Attach copies of any required local, county and state active business license(s) and permit(s), i.e., contractors, PUC, A&E registration etc.

A. For each license/permit attached, indicate:

Name of licensee	Name of Qualifying Individual	Type of licenses	DBE Code	Exp. Date

(If the qualifying individual is not one of the minority or women owners listed in the application, please explain in Item 28.)

12. OWNERSHIP INFORMATION

___Sole Proprietor ___ Partnership ___Corporation ___Joint Venture (Complete Schedule A)

Date established/incorporated _____ State_____

13. LIST OWNERS/INVESTORS WHO HAVE A 5% OR MORE INTEREST:

NAME	DBE Code	Gender M/F	Date of Owner-ship	No. of Shares	Voting %	U.S. Citizen?

Check here ____, if more space is needed and continue listing in Item 28.

14. BOARD OF DIRECTORS (in the last three years)

Name	Title	DBE Code	M/F	Expiration of

Check here ____, if more space is needed and continue listing in Item 28.

15. Firms with less than 100% minority/woman ownership, list the contributions of money, equipment, real estate, or expertise of each of the owners/investor. **Attach proof of the initial investment in the firm (dollars, real estate, equipment, etc.) on behalf of each of the owners. If more space is required continue in Item 28**

_____

_____

_____

_____

_____

16. MANAGEMENT: List individuals by name and title responsible for the management areas indicated. Detailed resume showing work/experience history and current responsibilities must be included for each individual listed.

DUTIES	INDIVIDUAL RESPONSIBLE	Reports to:	DBE Code
Preparation and presentation of estimates and bids:			
Hiring and firing management personnel:			
Final Determination of what jobs the company will undertake:			
Day to Day Operations			
Negotiations and approval of contracts:			
Administration of company contracts:			
Marketing and sales activities:			
Negotiating and signing for surety bonds?			
Supervision of field operations:			

17. Identify any owner or management official of the firm who is, or has been, an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Provide details of the arragement and relationship. Present business relationships include shared space, equipment, financing or employees, as well as both firms having the same owners.
Be sure to list those persons who are currently working for any other business which has a relationship with this firm, whether on a full-time or part-time basis as an owner, partner, shareholder, advisor, consultant, or employee.

18. COMPANY'S EXPERIENCE: List the three largest projects performed by the company in the last 3 years. If performed as a subcontractor, indicate the name of the prime contractor and a contact person for these projects.

Project	Dollar amount	Date Completed	Prime Contractor/ Contact Person

19. Indicate the firm's gross receipts for the last three tax years:

YEAR ENDING			
GROSS RECEIPTS	$	$	$

20. Name of Surety Company _____ Bonding limit _____

Agent _____ Telephone Number _____

21. Who signs for insurance and payroll? _____

Provide copy of the signed Corporate Bank Resolution(s) and bank account(s) signature card(s)

22. List all sources and amounts of money loaned to the company, when and by whom:

Source	Amount	Date	Terms

23. NAME, COMPANY AND ADDRESS OF FIRM'S CPA OR ACCOUNTANT

24. NAME, COMPANY AND ADDRESS OF FIRM'S ATTORNEY

25 WORKFORCE INFORMATION

Past calendar year: Highest Total _____ Lowest Total _____ Average _____

A. Permanent Personel Currently on Payroll

	Administrative	Clerical	Supervisory	Skilled	Unskilled
Part-Time					
Full-Time					
TOTAL					

B. Are any of the employees on another firm's payroll? Yes _____ No _____

If yes, please identify firm(s) and number of employees _____

26 Provide a listing of owned equipment. Do not include leases. Copies of the state registration cards and titles must be provided for all vehicles that require state registration/licensing. Copies of documentation of ownership for all other equipment owned must be attached.

27 Indicate if the firm or other firms with any of the same officers has previously received or has been denied certification of participation as a DBE, MBE or WBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

28 Please use the space provided below to explain any of the above items. You may attach additional sheets if necessary.

AFFIDAVIT

"The Undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of the firm bellow as well as the ownership thereof. Further, the undersigned agrees to permit an onsite review of the company's operation as well as the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds terminating eligibility as well as any contract which may be awarded and for initiating action under Federal and/or State laws concerning false statements."

NOTE: If additional information is required to determine certification, the conditions outlined herewith in the affidavit are applicable. If there are any significant changes in the information provided above that would alter your status as a DBE inform the certifying agency.

_____
Name of Firm

_____
Name Title

_____
Signature Date

On this _____ day of _____, 19__, before me appeared _____ who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of Firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____ Commission expires _____.

[Seal]

- Submit the following Documents (and any amendments thereto):

S			1. Current Federal Tax Form 1040 (plus previous two (2) years
S	P	C	2. Equipment rental and purchase agreement
S	P	C	3. Management service agreements
	P		4. Current Federal Tax Form 1065 (plus previous two (2) years)
	P		5. Partnership agreement
	P		6. Buy-out rights agreement
	P		7. Profit-sharing agreement
S	P	C	8. Proof of capital invested
S	P	C	9. Current financial statement prepared by an independent CPA or accountant
		C	10. Current Federal Tax Form 1120S and 4562 (plus previous two (2) years)
S	P	C	11. Resumes of principals of your company showing education, training and employment, with dates
		C	12. Article of incorporation, including date approved by State
		C	13. Minutes of first corporate organizational meeting
		C	14. Minutes of board meetings for the past two years
		C	15. Corporate bylaws
		C	16. Copy of stock certificates issued (not a specimen copy)
		C	17. Stock transfer ledger
		C	18. Proof of stock purchase
S	P	C	19. Copies of third-party agreements, such as rental or management service agreements,
S	P	C	20. Applicable license(s) and/or permit(s)
S	P	C	21. Business card
S	P	C	22. Birth certificate or American passport of qualifying applicant
S	P	C	23. Names of two client references
S	P	C	24. Lease/rental agreement for business site
S	P	C	25. One canceled check used for lease/rental of business site
S	P	C	26. Bank signature card
S	P	C	27. Recent contractual agreement between firm and client
S	P	C	28. Brochure (or descriptive information on firm)

S- Sole Proprietorship P - Partnership C - Corporation

BILLING CODE 4910-62-C

Appendix B to Part 23—Good Faith Efforts

The following is an array of efforts which can be made in any combination, which should be considered a part of bidders' good faith efforts to meet the contract goal. The degree to which these efforts were pursued should be considered in recipient's decision on approving the award to the successful bidder/offer.

A. Coordinating any pre-bid meetings at which DBEs could be informed of contracting and subcontracting opportunities.

B. Advertising in general circulation, trade association, and minority focus media concerning the subcontracting opportunities.

C. Providing written notice to all certified DBEs who have capabilities pertinent to the work of the contract that their interest in the contract is being solicited. (This notice should be in sufficient time to allow the DBEs to respond to the written solicitation.)

D. Following up initial solicitations of interest by contracting DBEs to determine with certainty if the DBEs are interested.

E. Selecting portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goals being achieved; (This may include, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.)

F. Providing interested DBEs with adequate information about the plans specifications, and requirements of the contract:

G. Negotiating in good faith with interested DBEs; (The evidence of such negotiations should include the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and a statement as to why additional agreements could not be reached for DBEs to perform the work. Extra cost involved in finding and utilizing DBEs should not be accepted as an adequate reason for the bidder's failure to meet the contract goal as long as such costs are reasonable.)

H. Not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. (The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not to be causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.)

I. Making effort to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor:

J. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and:

K. Effectively using the services of available minority/women's community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Appendix C to Part 23—DBE Developmental Program

(A) Each firm that participates in the developmental program is subject to a program term not to exceed 5 years from the date of program entry. The term will consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in § 23.29.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability beyond traditional areas of DBE program participation.

(D) The business plan should contain at least the following:

1. An analysis of market potential, competitive environment and other business analyses estimating the program participants prospects for profitable operation during the term of program participation and after graduation from the program.

2. An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

3. Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (D) 1. and 2. of this appendix;

4. Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

5. Such other information as the recipient may require.

(E) Each participant shall annually review its currently approved business plan with the recipient and shall modify such plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan shall be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient shall establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant shall annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast shall be included in the participant's business plan. The forecast shall include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation.

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages:

(1) a developmental stage and

(2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to; the number of contracts, aggregate amount of the contract received, years in business, growth potential and prospectus, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant shall annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this appendix. Such plan shall set forth the same information as required under paragraph (F) of this appendix of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace in non-traditional areas, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives if its business plan, the following factors, among others, shall be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient shall notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification shall set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification shall also provide the participant 45 days from the date of service of the letter to submit in writing information which would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient shall take such action if over a 2 year period a DBE firm exhibits such a pattern.

Appendix D to Part 23—Guidelines for Mentor-Protege Programs

The purpose of this program element is to assist DBEs to move into nontraditional areas of work, via the provision of training and assistance from other firms. Any mentor-protege program shall be evidenced by a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the resources covered. The formal mentor/protege agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protege through the life of the agreement. It is recognized that this type of service provided by the mentor is considered fundable under the applicable DOT federally assisted program.

To be eligible, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts, the recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protege is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protege agreement.

DBEs involved in a mentor-protege agreement must be independent business entities which meet the requirements for certification as defined in Part 23. If the recipient chooses to recognize mentor/protege agreements, formal general program guidelines shall be developed and submitted to the operating administration for approval prior to the recipient executing an individual contractor/subcontractor-mentor/protege plan.

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Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 24, et al.
Mortgagee Approval Reform and Direct Endorsement Expansion; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 24, 25, 30, 200, 202, 203, 204, 206, 207, 213, 220, 221, 222, 226, 227, 233, 234, 237, 240, 241, 242, 244

[Docket No. R-92-1506; FR 2854-F-02]

RIN 2501-AB16

Mortgagee Approval Reform and Direct Endorsement Expansion

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a comprehensive revision of the Department's regulations that prescribe the standards by which mortgagees are approved to participate in the HUD mortgage insurance programs, and by which approved mortgagees maintain their approval status. The rule also reorganizes and updates the Department's Direct Endorsement program requirements. The reforms in this rule include increasing the net worth requirements of approved mortgagees, and improving the Secretary's ability to monitor the performance of approved mortgagees and to determine whether continued participation should be allowed. The purpose of the rule is to ensure that only responsible and soundly capitalized mortgagees are program participants. The specific revisions made by the final rule are more fully discussed in the Supplementary Information portion of this rule.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1824, or (202) 708-4594 (TDD). (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB Control No. 2502-0005.

Introduction

On June 25, 1991 (56 FR 29100), the Department published a proposed rule to implement a comprehensive revision of HUD's mortgagee approval regulations and to reorganize and update the Direct Endorsement program requirements. A total of 188 comments were received. The majority of the comments (approximately 160) came from mortgage companies, including FHA approved nonsupervised mortgagees, loan correspondents, and subsidiaries and affiliates of banks or savings and loan associations. The commenters also included seven banks or savings and loan associations; seven attorneys or law firms; nine associations including the Conference of State Bank Supervisors, the Mortgage Bankers Association, the National Association of Home Builders, and the National Association of Realtors. The Financial Management Service Division of the Department of Treasury also submitted comments.

Many commenters expressed general support for the Department's objectives of improving the standards by which mortgagees are approved, and supported particular parts of the proposed rule. Most commenters also opposed parts of the proposed rule, and many provided specific suggestions for changes. On the basis of these comments and further development of the concepts set forth in the proposed rule, the Department has made changes to the proposed rule. These changes are discussed in the following sections of this preamble.

Approval Requirements

This rule revises part 202 to incorporate both (1) the current approval requirements for Title I lending institutions in a newly-designated subpart A, and (2) the approval requirements for single family and multifamily mortgagees, as revised by this final rule, in a new subpart B.

Changes Affecting Title I Program, Part 202, Subpart A

The material now designated as subpart A, which contains the approval requirements for Title I lending institutions, was part of a separate proposed rule published on January 29, 1991 (56 FR 3302) and published in final form on October 18, 1991 (56 FR 52414). When the Department published its proposed rule concerning mortgagee approval on June 25, 1991, which is now being published in final form, it proposed to conform differences in the approval requirements for mortgagees and Title I lenders. The Department requested comments on any differences between the two proposed regulations which should be retained, because of differences in the insurance programs, and requested that the commenters provide an explanation of how the differences in the regulations are related to program differences. No comments were received on the differences in Title I lender and mortgagee approval requirements, except in regard to the approval of Title I servicers.

In the preamble to the January 29, 1991 proposed rule (Title I rule) and the preamble to the June 15, 1991 proposed rule (Title II rule), the Department explained that it was considering conforming policies in both programs on the approval of trusts, partnerships, certain supervised institutions, and servicers. The approval of trusts has been eliminated in both the Title I rule and this final Title II rule.

Partnerships were not specifically made eligible for approval in the Title I final rule, whereas certain partnerships were proposed to be specifically eligible for approval under the Title II proposed rule pursuant to certain criteria stated in the proposed rule. (Under the Title I final rule and the prior Title II rule, some partnerships were approvable as "permanent organizations having succession". This was emphasized with respect to Title I lenders in the "Supplementary Information" of a recent correction to the Title I rule published on February 25, 1992 (57 FR 6479).) The Department has decided that in order to maintain consistency and ease of administration in the approval process the approval of partnerships should be treated the same in both the Title I and Title II programs. Therefore, this final rule amends the Title I rule to permit the approval of certain partnerships as Title I lenders on terms substantially similar to the rules for approval as mortgagees under this final rule. Those specific terms will replace the more vague "permanent organization having succession" standard.

This final rule eliminates the classification of "type 2" supervised mortgagees. The prior regulation defined a type 2 mortgagee as an institution subject to the inspection and supervision of a governmental agency that is required by law or regulation to make periodic examinations of its books and accounts. A type 2 supervised mortgagee was typically a subsidiary or affiliate of a bank or savings and loan association which was subject to periodic examination by a Federal or State agency. The Title I final rule retained a similar classification as part of the definition of a supervised institution. The Department has since determined that the reasons for eliminating type 2 mortgagees are applicable to the Title I program. (The reason for this change is discussed in this preamble under § 202.13.) Therefore, this final rule also amends the Title I rule to eliminate this

classification of lender. The approval classification of these Title I lenders will be changed to non-supervised. If a type 2 supervised institution was approved by the Department prior to November 18, 1991 (the effective date of the final Title I rule which raised net worth and line of credit requirements), the lender will be considered eligible for the three-year phase-in period provided by § 202.5(b) of the final Title I rule even though it was not previously approved as a non-supervised institution. As a non-supervised institution, however, it will be expected to comply immediately with the net worth and line of credit requirements applicable to all non-supervised institutions prior to November 18, 1991.

This final rule requires that servicers of mortgages insured under Title II of the National Housing Act must be approved mortgagees. Under § 202.41(a) of the final Title I rule, a servicer may function as the lender's agent in the servicing of Title I loans without being a Title I lender. The Title I lender that owns the loan remains fully responsible to the Secretary for actions of the servicer. Six commenters on the Title I rule had objected to a change in this arrangement similar to the change proposed for Title II insured mortgages. No such objections were received in regard to the proposal to approve servicers of Title II insured mortgages. The Department notes the more demanding nature of servicing with regard to Title II insured mortgages, with requirements on matters such as administration of escrow accounts, the assignment program and default counselling. The Department has determined that the difference in the Title I rule and this rule for mortgagees under Title II programs reflects differences in these lending industries and therefore the Department has followed the public comments and not conformed the program policies on this issue.

Section-by-Section Analysis of Part 202, Subpart B

The following is a section-by-section analysis of public comments and the changes that have been made in the mortgagee approval provisions of the final rule in response to the public comments. The Department notes that it has not introduced any special treatment for multifamily mortgagees except as noted in the discussion of §§ 202.12(n) and 202.14(c)(1) regarding net worth and warehouse lines of credit, respectively. However, in response to comments that multifamily mortgagees are fundamentally different than mortgagees making single family loans, the Department is considering the development of a proposed rule with certain special provisions for mortgagees approved only for multifamily loans.

Section 202.10 Definitions

No comments were received on this proposed section and it is being republished in final form without change.

Section 202.11 Approval, Recertification, Withdrawal of Approval and Termination of Approval Agreement

Section 202.11(a)(5)

Under § 202.11(a)(5) of the proposed rule, authorized agents would have been approved only for use by approved mortgagees in areas determined by the Secretary to be under-served, or under proposed § 202.17(d), for use by governmental institutions, Public Housing Agencies and State Housing Agencies.

The Department received nine comments on the changes to the authorized agent rules. A few commenters questioned HUD's motivation for limiting the use of authorized agents since both the principal and the agent are approved mortgagees. The original purpose of the authorized agent concept was to allow small supervised mortgagees, which did not have trained mortgage processors or access to direct endorsement, to utilize agents with these attributes. However, this situation limited the Department's ability to monitor mortgagees because the origination processing was done by the authorized agent, while the mortgage was closed in another mortgagee's name. In order to accommodate the legitimate needs of small mortgagees within an existing Departmental system and provide the tracking systems for the Department to hold each mortgagee accountable for their actions, the final rule allows small supervised mortgagees to utilize larger entities through the loan correspondent program.

Four commenters stated that the limitation on the use of authorized agents would adversely affect the small supervised mortgagee's ability to participate in the Direct Endorsement program. Since many small supervised mortgagees cannot afford to hire an underwriter or do not close a sufficient volume of mortgages to justify hiring an underwriter, they hire an authorized agent with Direct Endorsement approval to perform the underwriting function. Under the prior rule, a supervised mortgagee which conducted several different banking activities was precluded from being approved as a loan correspondent (and using a Direct Endorsement sponsor/underwriter) because a loan correspondent had to have mortgage lending as its principal activity.

The Department is sensitive to the concerns of these commenters and has amended § 202.15(a) of the final rule to permit supervised mortgagees to be reclassified as loan correspondents, without complying with the principal activity requirement. As a loan correspondent, the mortgagee will sell originated mortgages to its Direct Endorsement sponsor which has the responsibility of underwriting the mortgage under § 202.15(c)(1) of the final rule. The Department will change a mortgagee's approval classification from supervised mortgagee to loan correspondent upon request.

Two commenters questioned whether current authorized agents would be granted a grandfathering period to continue operating when the final rule becomes effective. The Department will not permit authorized agents to continue operating in that capacity after the effective date of this final rule, except for circumstances in which authorized agents will still be permitted to act in their current capacity. However, as discussed above, authorized agents may change their approval classification to loan correspondents upon request. Under the final rule, loan correspondents will then have two years to comply with the new net worth requirements.

One commenter pointed out that section 23 of the Federal Reserve Act (12 U.S.C. 371c) restricts certain transactions between member banks and their affiliates, including the purchase of loans above a percentage of the bank's capital stock and surplus. In order to accommodate mortgagees affected by this restriction, the final rule at § 202.11(a)(5) also permits mortgagees which are members of the Federal Reserve Board or whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration (i.e. supervised mortgagees under § 202.13) to use affiliates or subsidiaries as authorized agents.

This same commenter noted that the Office of the Comptroller of the Currency (OCC) permits national banks to establish loan production offices (LPO's) outside the state where the bank's main office is located. Under the prior mortgagee approval rule, such national banks were able to use bank affiliates to originate insured mortgages through an authorized agent

relationship. The proposed rule would have precluded national banks from using its affiliates under its existing nationwide LPO arrangement because the LPO could not be approved as an authorized agent. The amendment to § 202.11(a)(5) of the final rule (discussed in the preceding paragraph), which permits supervised mortgagees to use affiliates or subsidiaries as authorized agents, also eliminates this conflict with Federal banking regulations.

Section 202.11(d) proposed to allow the Department to terminate its relationship with a mortgagee based on specific performance standards measured by default and claim rates. Thirty-five commenters submitted comments on this section. While the specific concerns of the commenters varied greatly, in general, the comments showed some fundamental misconceptions of the Department's proposal. The final rule continues to include the basic approval agreement termination provisions as proposed, with some modifications in response to the public comments.

The final rule authorizes an origination approval agreement between an approved mortgagee and HUD. (The term "approval agreement" introduced in the June 25, 1991 proposed rule has been changed by this final rule to "origination approval agreement." The reason for the change is discussed in the preamble under § 202.11(d)(3).) The mortgagee's ability to originate mortgages for insurance will depend on continuation of the origination approval agreement. The Secretary can terminate an origination approval agreement of a mortgagee which has had a default and claim rate on insured mortgages originated by the mortgagee and that exceeds both the national rate and 200 percent of the HUD Field Office average rate. There is currently no mechanism by which the Department may terminate its willingness to accept for insurance mortgages originated by an approved mortgagee that has demonstrated unsatisfactory origination performance and, consequently, poses an unacceptable risk to the insurance funds, other than through formal administrative action by the Mortgagee Review Board. The Mortgagee Review Board's primary function, however, is to sanction lenders found to have committed serious violations of program requirements, or to have engaged in fraudulent activity with respect to the mortgage programs. Where the Mortgagee Review Board withdraws a mortgagee's approval, the mortgagee cannot reapply for at least one year.

The final rule establishes a relationship between a mortgagee and the Department under which the mortgagee's right to originate mortgages for insurance is terminable on the basis of failure to meet a performance standard measured in terms of the rate of defaults and claims, regardless of whether any specific program requirements were violated and without terminating the mortgagee's status as an approved mortgagee. The mortgagee could still purchase, sell or service insured mortgages as permitted by the rest of the rule, but its origination activity would end.

Section 202.11(d)(1)

Section 202.11(d)(1) of the final rule continues to set out the key definitions of this subsection with a clarifying change. Several commenters raised questions pertaining to the definitions and determination of the default and claim rates. The Department of Treasury stated that excessive delinquencies should be considered a performance measure, since delinquencies typically lead to defaults. In contrast, one commenter requested that the definition of "default" be clarified to state that defaults will not include mortgages that are delinquent. Two commenters proposed that the time frame for scrutiny should be "early" defaults and not more seasoned loans where the reasons for default are beyond the mortgagee's control.

The final rule does not adopt the suggestion of the Department of Treasury, partly because HUD does not track payment delinquencies, but more importantly because a significant number of delinquencies are cured before the mortgage goes into default. The definitions of default and claim have been clarified in the final rule to clarify that the default and claim rate includes only serious (i.e., 90-day) defaults occurring within one year of endorsement and claims paid within 18 months after endorsement. These definitions parallel those used for the default and claim reporting requirements at former § 203.8, which is redesignated in this rule as § 202.19.

Two commenters stated that the date of closing or first payment should be used as the basis for determining the default and claim rate instead of the date of insurance, because of the lag time between closing and insurance endorsement. This suggestion has not been adopted in the final rule because the Department's record systems are based on the date of endorsement and it has no easy access to records of closing dates.

Six commenters questioned whether defaults would be ascribed only to originators or also to servicers. The final rule retains the proposed rule definition of "normal rate" which considers defaults and claims in the Field Office area "in which the mortgagee originates mortgages." Servicers will not be terminated for a high normal rate because early, serious defaults and claims are usually the result of origination problems. Servicing problems more often result in delinquencies which are cured. However, a servicer's approval could be withdrawn by the Mortgagee Review Board for violation of the regulatory servicing requirements.

Six commenters were concerned about comparing mortgages within the geographic area of HUD Field Offices because defaults and claims may vary widely within these areas. They suggested that comparisons should be made in small geographic areas such as census tracts, zip codes, counties or neighborhoods. The final rule continues the scheme of review as proposed. First, under § 202.11(d)(2), the Department will review defaults and claims of a mortgagee in the HUD Field Office area. The review may focus on an individual branch office. Second, § 202.11(d)(3)(ii) requires the Department to review census tract area concentrations of the defaults and claims before sending a termination notice. Further, § 202.11(d)(3)(iii) provides that a mortgagee which has received a termination notice may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee before the termination is instituted. The Department will take into consideration all relevant factors for the excessive default rates, including default statistics within zip codes or neighborhoods, before the termination is made final.

Similarly, approximately fourteen commenters raised a variety of concerns related to potential inequities resulting from the use of default and claim rates. For example, three commenters stated that termination based on pure statistical information is arbitrary because the reasons for defaults may be based on individual situations beyond the mortgagee's control, such as sickness, loss of job or marital difficulties. These commenters felt that termination should be based on a case-by-case review to determine if the mortgagee committed an infraction of the underwriting procedures. Other commenters were concerned that the default and claim rate tracking will discourage mortgagees from lending in under-served areas, in areas hit by economic catastrophe, and to high risk borrowers because these are the areas that will result in higher defaults. The

Department points out that a mortgagee's default and claims are not reviewed in isolation, but are compared to the percentage of claims and defaults of other similarly situated mortgagees. The Department presumes that a certain percentage of all origination will go into default as a result of the borrowers' individual situations and that these statistics will be factored into the area average rate. The Department also anticipates that in areas of economic hardship the overall percentage of defaults and claims may be higher than in other areas or other years. However, among mortgagees in an economically depressed area and among originations in that year the rate of defaults and claims should be similar.

For example, in an area where a factory closed most mortgagees might be experiencing a default and claim rate that is high from a national perspective, but that is the normal rate for the area. However, a default and claim rate by a mortgagee for the same area that is substantially higher than the normal rate for the area would indicate that there are business and origination problems beyond those associated with the economy of the neighborhood. In such cases, the Department would seek to exercise its right to terminate that mortgagee's approval to originate insured mortgages. Additionally, the Department recognizes that a mortgagee which lends in under-served areas may experience unusually high default rates. For this reason, before termination, the Department also will take into account census tract data to assure the availability of mortgage credit in under-served areas. The Department does not intend to penalize mortgagees for satisfying their obligations under the Home Mortgage Disclosure Act and the Community Reinvestment Act.

Six commenters stated that termination based on a strict percentage discriminates against small volume lenders. The Department will consider the rate of defaults and claims in light of the total loan origination activity in its review of the statistics and in any informal conference that might result.

Eleven commenters stated that the inaccuracy of HUD's default statistics is notorious throughout the industry, particularly in the Single Family Default Monitoring System (SFDMS). The commenters were concerned that if a mortgage is reported on the SFDMS and the claim is filed within the same calendar quarter, the case could be counted twice. Mortgages are required to report their default statistics to the Department monthly. Thus, the Department's statistics are only as accurate as the mortgagee's reports. The Department does not expect that double counting will result because the "normal rate" is a combination of both default and claim statistics. If a statistical error occurs, the mortgagee may bring it to the attention of HUD at the informal conference. As explained in the preamble to the proposed rule, the Department will make available to all approved mortgagees, on a quarterly basis, data showing their default and claim rates in comparison to the HUD area office and national rates. This will enable each mortgagee to detect potential problems with their origination practices, as well as with their statistics.

HUD has removed the separate reference to coinsured mortgages in this section and in the similar definition in § 202.19(a)(1) to eliminate any implication that references to FHA insurance in part 202 would not normally include coinsurance.

Section 202.11(d)(2)

Section 202.11(d)(2), which provides for a quarterly review of defaults and claims, remains unchanged from the proposed rule. Two commenters stated that the three month review period is inadequate because it does not provide ample time to obtain a complete picture of a mortgagee's performance. Both commenters suggested that a twelve month period would be a reasonable standard for evaluating mortgagee origination performance. While § 202.11(d)(2) requires HUD to conduct a review every three months, § 202.11(d)(3)(i) provides that termination is based only on the rate of claims and defaults on mortgages originated during a Federal fiscal year. Thus, the rule already uses a twelve month period for evaluating mortgagee performance. The Department anticipates that origination during each Federal fiscal year will be subject to five quarterly reviews (i.e. reviewed for a total of 15 months).

Four commenters stated that only loans originated after the effective date of the rule should be included in the default and claim statistics. The Department will implement this rule prospectively. However, reviews will begin on the effective date of this final rule in order to get the review systems in place. No termination notice will be issued based on loans originated prior to the effective date of this final rule.

Section 202.11(d)(3)

Section 202.11(d)(3) sets out the grounds and procedure for termination of a mortgagee's origination approval agreement. Several comments were received concerning this subsection and the consequences of termination.

Four commenters stated that the threshold percentages for termination are too low. The commenters suggested that the thresholds should be raised to 250 percent for the credit watch and 350 percent for termination. The commenters also suggested that these percentages could later be reduced, and that rates should be set at a nationwide standard of the break-even level for HUD insurance funds.

In determining the rate of defaults and claims which would constitute an unacceptable risk to the Department, HUD compiled the individual claim and default rates of all approved mortgagees in each HUD Field Office and analyzed this data. It was determined that mortgagees which have twice the default and claim rate of the Field Office normal rate have demonstrated unsatisfactory performance and pose an unacceptable risk to the insurance funds.

Seven commenters stated that the termination process lacks due process because 30 days is insufficient time to analyze data, prepare a response, and schedule a meeting with HUD. The commenters suggested that 90 days is more appropriate and that there should be a right to make a formal appeal due to the severity of the penalty. One commenter also stated that there is no discernible standard for mortgagees to meet to rebut the presumption of unsatisfactory performance at an informal conference and that the rule provides HUD with too much discretion in determining whether to rescind its termination or credit watch determination. One commenter noted that the rule does not state the length of the penalty.

Based on the comment concerning the timing of the notice the Department has modified the final rule to provide that the mortgagee shall receive 60 days notice before its origination approval agreement is terminated. The Department will consider all relevant factors, including statements and documents provided by the mortgagee, in determining whether the causes for termination have been remedied. The final rule at § 202.11(e)(3) continues to grant terminated mortgagees the right to reapply for a new origination approval agreement by showing that the causes for termination have been satisfactorily remedied.

Four commenters made a variety of comments concerning the consequences of termination. The commenters requested clarification on whether a terminated mortgagee would be permitted to continue to originate

mortgages for HUD insurance, to service its own portfolio, or service other mortgagee's portfolios. After consideration of these comments, the Department has modified the final rule to clarify that the only activity that will be terminated based on a high normal rate is the mortgagee's origination authority. The final rule is clarified by using the term "origination approval agreement" and by adding a § 202.11(e)(4) which states that termination of the origination approval agreement shall not affect a mortgagee's right to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

One commenter feared that termination will have a "ripple effect" in the industry and secondary market, because termination of HUD approval will automatically result in loss of approval with the Federal Home Loan Mortgage Corporation (FHLMC), Government National Mortgage Association (GNMA), and may cause mortgagees to be in breach of their correspondent agreements. Another commenter stated that under the Secondary Mortgage Market Enhancement Act, conventional mortgages, originated by a mortgagee which lost its HUD approval and which was not a depository institution, would become ineligible to be pooled to back private securities.

The Department is unable to regulate the approval requirements of the secondary markets. However, as explained above, termination of a mortgagee's origination approval agreement is not the equivalent of withdrawal of approval by the Mortgagee Review Board. Termination based on high default and claim rates prevents the mortgagee from originating mortgages for HUD insurance, but reserves for the mortgagee the approval to purchase and service HUD-insured mortgages and to reapply for a new origination approval agreement upon a determination by the Secretary that the underlying causes for termination have been remedied. In contrast, withdrawal of approval by the Mortgagee Review Board applies to origination and servicing of HUD insured mortgages and does not expire for at least one year.

Two commenters stated that termination should be limited to the offending branch or personnel and not extended to the entire company. Section 202.11(d)(2) of the final rule retains the proposed rule provision which gives the Secretary the power to review and sanction branches individually. In reviewing a mortgagee's performance, the Department will analyze the mortgagee's overall claim and default rate, as well as that of each of its branch offices. Where a branch office exceeds the claim and default threshold, branch approval alone may be terminated or the branch office may be subject to a credit watch. The Department approves mortgagees, not their employees. The Department does not have the means to track the origination records of the mortgagee's personnel. If the mortgagee can trace an excessive default and claim rate to the practices of a specific employee, the mortgagee could take action against that employee and present this evidence at an informal conference.

Sections 202.11(d)(4), (5)

With one exception noted below, § 202.11(d)(4) and (5) were not revised by the final rule. These sections provide that mortgagees with a default and claim rate greater than 150 percent but equal to or less than 200 percent will be placed on credit watch status whereby insured mortgages originated during a six month period will be reviewed for excessive default rates.

Two commenters were concerned that the credit watch review period did not allow the mortgagee sufficient time to improve its performance. They recommended a three to four month lag time in review of mortgages in the preceding 12 months.

The Department has not adopted this suggestion because it is based on a misunderstanding of the period of review under the credit watch. Once a mortgagee is placed on credit watch, the Department is not tracking mortgages originated in the prior six-month period, but those originated during the six-month period commencing from the date of the credit watch notice. The default rate on mortgages originated during the credit watch will be reviewed for one year after the six-month tracking period.

A mortgagee whose claim and default rate is between 150 percent and 200 percent of the HUD Field Office average will be placed on a "credit watch" provided that the Department's review of the census tract data warrants such action. All mortgages originated during the six-month period following the credit watch notice (the tracking period) will be reviewed for one year after the end of the tracking period. A mortgagee on credit watch may have its origination approval agreement terminated upon 60 days notice if the claim and default rate on mortgages originated by the mortgagee during the tracking period is above 150 percent of the HUD Field Office average. This represents a change from the proposed rule which only provided for 30 days notice. If a mortgagee's claim and default rate for the tracking period drops below the 150 percent level, the credit watch will end. A mortgagee which has received notice that its origination approval agreement is to be terminated subsequent to the credit watch may also request an informal conference as discussed above.

Section 202.12 General Requirements

Section 202.12(a)

Section 202.12(a) proposed to remove trusts from the types of businesses that may be approved as mortgagee participants in the HUD mortgage insurance programs. The Department specifically solicited comments on the proposal to not approve trusts. No comments were received on this proposal. Accordingly, the final rule will not permit approval of trusts.

The proposed rule also provided that all partnerships must have one managing general partner, which has as its principal activity the management of the partnership, and which deals directly with the Department in regard to the partnership's insured mortgages. In the final rule, the Department has revised § 202.12(a)(1) to clarify that corporate general partners are prohibited from being personal corporations run by only one person. The Department also intends to approve joint ventures which meet the eligibility requirements for partnerships.

Five commenters (a bank and four of its affiliates) objected to the principal activity requirement for limited partnerships, and favored permitting a managing general partner to manage several limited partnerships to increase flexibility and economies of scale. The final rule has been amended to permit a general partner to manage more than one partnership provided that its principal activity is the management of the partnerships, and each partnership is involved in mortgage lending and not other unrelated businesses.

Section 202.12(d)

This section has been reworded slightly to emphasize that mortgagee's escrow accounts must be fully insured, so that mortgagees with accounts exceeding insurance coverage must establish additional accounts and/or establish accounts at more than one financial institution.

Section 202.12(h)(1), (2)

Sections 202.12(h) (1) and (2) of the proposed rule would have established the requirement that a State-licensed mortgagee submit a copy of the license with its application for approval, and submit an annual certification that it is

in compliance with all State licensing requirements. Five commenters pointed out that these requirements would be difficult to comply with due to the differing State licensing requirements and the burden of providing HUD with copies of numerous State licenses. Two commenters recommended that HUD accept a certification that the mortgage is in compliance with State licensing requirements, in lieu of a copy of the license. The Department has amended the final rule to provide that the mortgagee must submit with its application and annual recertification, a certification stating that the mortgagee has not been refused a license and has not been sanctioned by any State or States in which it will originate insured mortgages.

Section 202.12(h)(4)

Section 202.12(h)(4) of the proposed rule required each approved mortgagee to file a quarterly financial statement with the Department for each quarter in which it experiences an operating loss of 20 percent or more of its net worth in one quarter of a fiscal year. Four commenters noted that, given the cyclical nature of the mortgage banking business, a quarterly review was too short and a 20 percent loss was too low. One of the commenters stated that other agencies already collect this information. The Department is not aware of any other agencies collecting this information. If such a collection would be made it would be privileged information, and therefore not subject to disclosure. This requirement is a reporting requirement and, absent other violations of the approval regulations, will not result in any sanction being taken against the mortgagee. Since the reports will assist HUD in detecting financially troubled mortgagees, no change has been made to this section in the final rule.

Section 202.12(k)

Section 202.12(k) of the proposed rule continued to permit HUD to set application and recertification fees. The preamble to the June 25, 1991 proposed rule (56 FR 29108) announced that the Mortgagee Approval Handbook would establish a $1,000 application fee and $300 branch application fee. In addition, the annual recertification fee would be raised to $500 for the mortgagee, and $200 for each branch office. Eleven comments were received stating the increases in the fees are excessive. The Department continues to believe that the increase in application fees is justified because the operating cost of processing mortgagee applications has increased. Furthermore, the increased emphasis on monitoring mortgagees under this final rule justifies the increase in renewal fees, because the cost of monitoring should not adversely affect the insurance funds.

Section 202.12(n)

Section 202.12(n) of the proposed rule would have established net worth requirements based on the volume of loans originated or the outstanding balance of loans serviced by approved mortgagees, except loan correspondents and sponsors. The June 25, 1991 rule proposed to establish four tiers of net worth requirements beginning with a net worth of $250,000 for mortgagees with $25 million or less in annual insured mortgage origination or servicing portfolios, and ending with a net worth of $1,000,000 for mortgagees that originate or service more than $100 million in insured mortgages. The proposed rule required loan correspondents to have a net worth of $50,000, with additional net worth required for each branch office. All mortgagees who act as sponsors for loan correspondents, or who both originate and service insured mortgages, would have been required to have a net worth of $1,000,000.

The proposed net worth requirements received the largest number of public comments. Seventy-two commenters considered the proposed net worth requirements to be excessive and stated that a higher net worth cannot be correlated with better quality loan production. Nine commenters specifically stated that the net worth requirement for sponsors was too high. Eighty-two commenters stated that the higher net worth would create a severe hardship on small mortgagees and loan correspondents. Many of these commenters expressed concern that the proposed requirements would put small mortgagees out of business, which would reduce the availability of FHA-insured mortgages. Eleven commenters claimed that HUD did not produce sufficient data to support the proposed increase in net worth requirements. Five commenters noted that the net worth tiers are too broadly drawn, creating a financial hardship for mortgagees at the high-end of one level to move to the next level. Some of these commenters suggested that the net worth requirement should be one percent of a mortgagee's total HUD volume in one year. A few mortgagees objected to the net worth requirements for a multifamily lender because the dollar value of its mortgage volume may be very large even though it only closed one or two mortgages.

The Department agrees that graduated increases of net worth would mitigate hardship for mortgagees. Accordingly, the net worth requirement has been revised in the final rule to require a mortgagee to maintain a net worth of one percent of insured mortgage volume for supervised and non-supervised mortgagees, including sponsors of loan correspondents. To determine mortgage volume, the Department will add:

(1) The aggregate original principal amount of the mortgages that were endorsed for insurance during the mortgagee's prior fiscal year, and (2) the aggregate principal amount of all insured mortgages serviced by the mortgagee at the end of the mortgagee's prior fiscal year, except those mortgages which were originated by the mortgagee or purchased from its loan correspondents. The rule includes a base net worth for supervised and non-supervised mortgagees of $250,000 if the volume of insured mortgages in the prior year was less than or equal to $25 million; and a maximum net worth requirement of $1 million for these mortgagees with a volume over $100 million. Based on the comments from multifamily mortgagees, the final rule establishes a net worth requirement of $250,000 for multifamily mortgagees, equal to the requirement for the smallest of the supervised or non-supervised mortgagees doing single family business. The one million dollar net worth requirement for sponsors of loan correspondents has been replaced with a requirement similar to the one percent of volume requirement discussed above, but the volume of mortgages purchased from a sponsor's loan correspondent(s) will also be included in the sponsor's mortgage volumes. The net worth requirements for all other classifications of mortgagees appear in the final rule without change from the proposed rule.

The final rule still retains an overall increase in the net worth requirements from the net worth requirements contained in the prior regulations. This final rule increases the net worth requirements because a more heavily capitalized company is more likely to have adequate and separate quality control functions. Capitalization also enables the company to employ sufficient staff to insure an appropriate separation of duties which creates a system of checks and balances. There is less stress on well capitalized companies to misuse restricted funds such as mortgage insurance premiums or escrows for operating expenses. In addition, loan volume bears a direct relationship to the risk to the Department. Thus, it is appropriate for the Department to require that approved

mortgagees have sufficient capital and staff available to process those mortgages.

Section 202.12(o).

Section 202.12(o) proposed that all mortgagees approved before the effective date of the final rule, except loan correspondents, would have two years from the effective date of the final rule to meet the new net worth requirements. Loan correspondents would have been required to meet the new net worth requirements by the effective date of the rule. Thirty-six commenters objected to the lack of a phase-in period for loan correspondents, stating that this was inequitable treatment of this category of mortgagees. Seven commenters stated that the two year phase-in period was an inadequate amount of time to increase capital.

Based on these comments, the Department has changed the final rule to provide a two year phase-in period for all currently approved mortgagees including loan correspondents. The Department believes that two years is a sufficient amount of time for a mortgagee to reorganize or change its approval classification to meet the new net worth requirements.

Section 202.12(q)

Section 202.12(q) proposed to establish the requirement that approved mortgagees continually maintain liquid assets (cash or its equivalent) of 20 percent of their net worth up to a maximum amount of $100,000. While six commenters stated that the liquid asset requirement was excessive, particularly for small lenders, the Department of the Treasury recommended that the requirement be increased to 50 percent of net worth, because cash flow problems and tight credit are major contributors to business failures. Three commenters objected to the Department's rationale for imposing the liquidity requirement, stating that the liquidity requirement will not prevent FHA program abuses.

The final rule retains the liquidity requirement as proposed because it provides the mortgagee with a reserve of cash upon which to draw if unexpected expenditures arise. The Department believes that the requirement reduces the temptation to misuse trust funds such as mortgage insurance premiums and escrow accounts. A liquidity requirement of 20 percent of net worth is a reasonable requirement, but not as burdensome as that suggested by the Treasury.

Three commenters requested clarification on whether the definition of liquid assets would include lines of credit or loans held for resale. The preamble to the proposed rule stated that liquid assets would be comprised of cash in banks and on hand, and other cash assets not set aside for specific purposes other than the payment of a current liability or a readily marketable investment. The preamble also stated that net worth would continue to be comprised of the assets acceptable under the Generally Accepted Accounting Practices (GAPP), except for those assets excluded by paragraph 8–6 of HUD Handbook 2000.4.

The Department will not consider a line of credit to be a liquid asset because it is a liability to the extent that it is used. The Department will not consider loans or mortgages held for resale to be a liquid asset because such items generally are not considered liquid under the GAAP.

Section 202.12(r)

Section 202.12(r) proposed a requirement that all mortgagees, except loan correspondents, maintain a fidelity bond covering the mortgagee's employees and agents. The preamble to the proposed rule stated that the Department would require a bond of $300,000. Four commenters requested clarification of this requirement because a fidelity bond generally does not include errors and omissions coverage and would not necessarily provide a source of indemnification to the Department as was stated in the preamble.

The final rule has been clarified to state that both a fidelity bond and errors and omissions coverage are required. The Department will require a base coverage of $300,000 in fidelity bonds and $300,000 in errors and omissions coverage. The Department does not intend that it receive payment or file claims. However, the requirement will provide an indirect benefit to HUD by assuring that mortgagees have a source of insurance in the event of employee fraud or negligence, so that mortgagees will not be forced out of business in those cases of employee fraud or negligence.

Seven commenters stated that a fidelity bond is very costly and difficult to obtain. The final rule nevertheless retains this requirement because it is consistent with the requirements of other agencies and entities involved in the mortgage business, including FNMA, GNMA, and FHLMC.

One commenter suggested that the fidelity bond requirement not be applied to mortgagees with high liquid assets. The Department has not adopted this suggestion because fidelity bonds and errors and omissions policies provide a different type of protection from the liquid assets requirement. The insurance policies protect against fraud and negligence; the liquidity requirement assures that there is sufficient cash to handle unforeseen business expenses.

One commenter stated that this type of coverage is not offered by domestic insurers. The Department is aware of several entities, both domestic and international, with domestic offices, which issue policies.

Two commenters suggested that the requirement only should apply to servicers and not to mortgagees which solely originate loans. This suggestion was not adopted in the final rule because the significant amount of funds handled at origination creates the potential for fraud and/or errors. It is HUD's experience that many insurance claims are due to origination problems.

One commenter stated that a fidelity bond only should be required in States which do not have alternative insurance requirements. The example given was of an Illinois requirement for a $20,000 surety bond. This suggestion was not adopted in the final rule because it is too administratively burdensome for HUD to keep up with insurance requirements and the enforcement of those requirements in all States, and because the State requirements may not meet the intent of the HUD requirement as with the Illinois example. The Department does not expect the bond and insurance requirement to be a burden for most mortgagees because it is a standard requirement of the secondary market agencies. The Department is likely to issue more detailed guidance to all mortgagees concerning the bond and insurance requirements but, in general, mortgagees are advised that fidelity bonds and errors and omissions insurance generally acceptable to the secondary market agencies will meet the intent of HUD's requirement. However, the Department does not wish to foreclose the possibility that in unusual circumstances a mortgagee might develop other insurance arrangements that also meet the intent of the HUD requirement without a fidelity bond and/or errors and omissions insurance. Since the mortgagee approval requirements are not subject to waiver, the Department has included in this final rule a provision that permits the Department to approve other types of coverage which are substantially similar to fidelity bonds and errors and omissions coverage.

Section 202.13 Supervised Mortgagees

Section 202.13(a)

Section 202.13(a) deletes "type 2" supervised mortgagees as a category of approved mortgagee. Under the prior regulations, a type 2 supervised mortgagee was typically a subsidiary or affiliate of a bank or savings and loan association which was subject to periodic examination by a Federal or state agency. The Department received one comment from the Conference of State Bank Supervisors (CSBS) specifically addressing this change. Noting the highly regulated nature of state banking, CSBS requested that the Department explain what harm and loss to the public flows from bank-affiliated type 2 supervised mortgagees.

As explained in the preamble to the proposed rule, the rationale for deleting the classification of type 2 supervised mortgagees is that the Department is unable to determine the adequacy of periodic examinations conducted by other agencies. Examinations of approved mortgagees by other agencies do not always provide adequate assurance that mortgagees are performing in accordance with HUD financial and program standards. Type 2 supervised mortgagees will be converted to approved nonsupervised mortgagees under § 202.14. The major differences in the requirements between a nonsupervised mortgagee and a supervised mortgagee under this final rule are that a nonsupervised mortgagee must submit an annual audited financial statement to the Department, and maintain a warehouse line of credit or other acceptable funding program. Elimination of the type 2 supervised mortgagee category will provide better supervision by HUD without imposing an undue burden on mortgagees.

A type 2 supervised mortgagee that is converted to a non-supervised mortgagee due to this final rule will be eligible for the two-year phase-in for increased net worth requirements provided by § 202.12(o) even though it was not previously approved as a non-supervised mortgagee.

Section 202.14 Nonsupervised Mortgagees

The Department specifically requested comments on the proposed change at § 202.14(c) to increase the warehouse line of credit requirement to $3 million. Seven commenters stated that a high warehouse line of credit has no relationship to loan quality.

The Department disagrees with these commenters because the warehouse lender conducts an independent review of the financial and operational stability of the mortgagee before advancing the line of credit. This review provides HUD with additional assurances of acceptable quality control by the mortgagee.

Thirty-six commenters, including the Department of Treasury, stated that the proposed warehouse line of credit is excessive and extremely difficult to obtain given the tightening of credit by banks. Many of these commenters stated that this requirement will adversely affect small lenders. A few commenters noted that the proposed warehousing requirement is inconsistent with the net worth requirements because many warehouse lenders require the mortgagee to have a minimum net worth of $1 million to be eligible for a $3 million line of credit. Several other commenters noted that warehouse banks generally impose a non-user fee of 10–25 percent of the original face value of the warehouse line, which is not used. Eight commenters suggested that the warehouse line of credit requirement should be graduated in proportion to loan volume. Some of these commenters also suggested that the requirement provide for a phase-in period.

The Department continues to believe that the prior requirement of a $250,000 warehouse line of credit requirement was inadequate to assure that mortgagees have sufficient sources of credit to fund their loan production. However, the Department also understands the objections raised by the commenters. Due to the obstacles in establishing a fixed warehouse line amount for all mortgages, the Department has decided that the exact amount of the warehouse line of credit should be primarily a business decision determined by each mortgagee. Accordingly, the final rule requires a warehouse line of credit or other funding agreement that is adequate to fund the mortgagee's average production pipeline for 60 days of mortgage origination, but not less than a warehouse line of credit or funding agreement of one million dollars. The term "other funding agreement" refers to the table funding or concurrent funding arrangements discussed by the commenters, or to any other funding program acceptable to the Secretary.

Under § 202.15(c)(3), which is discussed below, loan correspondents will not be required to maintain a separate warehouse line of credit if they have an acceptable funding program with a single sponsor.

Multifamily mortgagees have been exempted from this requirement in the final rule.

Section 202.15 Loan Correspondents

Section 202.15(a)

Section 202.15(a) of the proposed rule has been clarified in this final rule to include the prior requirement (from former §§ 203.5(b) and 203.4) that a loan correspondent must have as its principal activity the origination of mortgages.

Section 202.15(c)(1)

Section 202.15(c)(1) restates the policy that for mortgages not processed through Direct Endorsement, the loan correspondent must process and close the loan in its own name. In most cases, the Direct Endorsement sponsor underwrites the mortgage and the loan correspondent closes in its own name. In response to a comment, a clause has been added to this section to clarify that in both cases the mortgage must be closed in the loan correspondent's own name. One commenter suggested that the rule permit loan correspondents to close the loan in the sponsor's name. The Department has not adopted this suggestion because such an arrangement would recreate the problems associated with authorized agents, the use of which will be limited by this rule. (See § 202.11(a)(5) above).

Section 202.15(c)(3)

Section 202.15(c)(3) makes the new warehouse line of credit requirements applicable to loan correspondents unless a single sponsor agrees to fund the mortgages originated by the loan correspondent.

One commenter suggested that the final rule permit lower warehouse lines for loan correspondents, where several loan correspondents are related to a single sponsor in ownership and management. Another commenter proposed that the final rule permit concurrent funding, whereby the sponsor uses its own warehouse line to fund mortgages closed by the loan correspondent.

The prior regulations permitted and this final rule still permits sponsors to establish funding arrangement with its loan correspondents as alternatives to the loan correspondent maintaining a warehouse line of credit. No changes have been made to this section in the final rule.

Section 202.15(c)(6)

Section 202.15(c)(6) of the proposed rule stated that sponsors and loan correspondents shall have a principal-agent relationship. Thirty-one commenters submitted comments on this provision. The majority of the commenters, 22 commenters, felt that

sponsors would refuse to assume the additional liability imposed by the proposed rule and the result would be that the number of loan correspondents would be significantly reduced. Five commenters specifically noted that the imposition of a general agency relationship goes beyond the scope necessary to hold the sponsor accountable for the correspondent's actions in the origination of insured mortgages. One commenter raised the concern that the proposed rule would negate the incontestability clause at section 203(e) of the National Housing Act (Act). Another commenter inferred that HUD intended to hold the sponsor criminally liable for the fraudulent acts of the loan correspondent.

The Department's intent is to include in the regulations the natural consequences of the existing policy that a sponsor is required to supervise and provide quality control for its loan correspondents. However, the Department acknowledges that the wording of the proposed rule may have had broader consequences than the intended objective of specifying the responsibility of sponsors for the loan origination of its loan correspondents. The final rule has been revised to provide that the sponsor shall be responsible for the actions of its loan correspondent in originating mortgages. (The language of this provision is similar to the loan correspondent provisions of the Title I final rule, published on October 18, 1991, where the Department also had proposed a principal-agent relationship). Whether or not a sponsor establishes a principal-agent relationship with its loan correspondent under relevant State law, this final rule establishes that the sponsor is responsible to HUD for the origination of mortgages. The origination of mortgages includes the entire origination process through closing the loan, handling the funds collected at closing, and obtaining the mortgage insurance.

The sanctions that HUD will seek to impose on the sponsor in appropriate cases, regardless of a sponsor's actual knowledge of the loan correspondent's actions, are the administrative actions currently authorized under 12 CFR part 25 to be taken by the Mortgagee Review Board. The final rule also establishes a rebuttable presumption that imputes the correspondent's conduct to the sponsor where the applicable law or regulation requires specific knowledge on the part of the party to be held responsible by the Secretary, such as under the Program Fraud Civil Remedies regulation at 24 CFR part 28 or the Civil Money Penalties regulation published on May 22, 1991 (56 FR 28622). A sponsor will be presumed to have knowledge of the actions of its loan correspondents unless it can establish otherwise by affirmative evidence.

The Department also has considered whether the sponsor should be held liable under several other statutory and regulatory provisions which authorize both criminal and civil penalties. For example, 18 U.S.C. 287 and 1001 provide criminal penalties for anyone who knowingly or willingly makes any false, fictitious, or fraudulent claims, statements or writings to any department or agency of the United States. Similarly, 31 U.S.C. 3729 provides civil penalties for any person who knowingly presents a false or fraudulent claim for payment to the United States Government. A sponsor could be held liable for violations of these sections if it knowingly made a false statement or claim or if it had knowledge that its loan correspondent made a false statement or claim. The Department does not intend to rely on § 202.15(c)(6) of this final rule to hold a sponsor liable for violations of these sections. However, nothing in the final rule would prevent liability of the sponsor if the sponsor would be liable on the basis of other legal principles.

The final rule will not undermine the incontestability clause of section 203(e) of the Act. Under that statutory section, the validity of mortgage insurance is incontestable in the hands of an approved mortgagee, except for fraud or misrepresentation on the part of such mortgagee. Section 203(e) of the Act will be given the same interpretation under this final rule as it has had under the prior regulations. Mortgage insurance will be incontestable when a mortgage is purchased by the sponsor, unless there is fraud or misrepresentation on the part of the sponsor.

Three commenters stated that it is not necessary to impose an agency relationship through HUD's approval regulations because sponsors participating in the Direct Endorsement program already have financial responsibility for the mortgage. Two commenters stated that sponsors already screen the performance of loan correspondents before establishing a business relationship. For these mortgagees which appreciate their underwriting responsibilities the Department does not expect that the final rule will present a hardship. However, the Department does expect that in general the final rule will result in greater industry self-regulation by making sponsors more selective about the loan correspondents from whom they purchase insured mortgages and will result in greater quality control in the origination of insured mortgages.

Section 202.18 Approval for Servicing

Under the proposed rule, this § 202.18, together with a related new § 207.263 and an amendment to § 203.502, would establish a requirement limiting servicing of insured mortgages to mortgagees that have been approved for servicing. The Department intends that this requirement also apply to subservicers. One commenter stated that the revised § 203.502 would make the original mortgagee responsible to HUD for actions of the servicer. The commenter apparently was addressing the language that has always been in § 203.502, which is: "The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be actions of the mortgagee." Because the proposed rule did not affect this language which continues to be HUD policy, and no other comments on the servicing proposal were received, §§ 203.502 and 207.263 are adopted without change. Since most mortgagees are obligated under servicing contracts, this provision will be effective one year after the effective date of this final rule. This phase-in period was omitted from the proposed version of § 202.18 but is included in the final rule.

The Secretary will have the right to rescind approval for servicing based on unsatisfactory performance. Such an action will not affect any aspect of the mortgagee's approval other than its ability to service insured mortgages. If the Secretary determines that a mortgagee's approval should be suspended or withdrawn because of unsatisfactory servicing, the Mortgagee Review Board would be requested to take such action under 24 CFR Part 25.

Conforming Changes

Conforming changes in this final rule that are related to mortgagee approval provisions but were not set forth in the proposed rule appear in §§ 25.9 (h) and (u), 204.1, 204.2(a), 206.9, 207.22, 207.263, 213.39, 213.502, 220.563, 227.501(a), 234.5, 241.40, 241.1040, 242.25 and 244.25. The majority of these conforming changes simply reflect the new section designations for the mortgagee approval provisions.

Mortgagee Approval Citations Chart

A chart showing previous section designations for mortgagee approval requirements and the equivalent new section designations appeared in the June 25, 1991 proposed rule at 56 FR

29105. This chart remains applicable to this final rule.

Administrative Sanctions

Limited Denial of Participation

No comments were received on the proposed amendments to §§ 24.700 and 24.710(a)(3), which would provide the Deputy Assistant Secretary for Single Family Housing with the authority, concurrent to that of the HUD offices, to impose LDP actions within one geographic area or nationwide. The final rule adopts these amendments as proposed.

Mortgagee Review Board

As proposed, the final rule at § 25.9 will include violation of the liquidity and warehouse line of credit requirements set forth in proposed new §§ 202.12(q), 202.14(c)(1), 202.15(c)(3), and 202.16(b)(2) as grounds for administrative actions. Section 25.9(d) is also reworded to conform to the wording of § 202.12(d) on escrow accounts.

Civil Money Penalties

The final rule makes conforming changes to 24 CFR part 30 to reflect redesignation of rule provisions referenced in that part.

Direct Endorsement Program—Expansion of Program and Reorganization of Regulations

The regulations previously located at §§ 200.163 and 200.164 established the requirements for the Direct Endorsement program, and the criteria for approval of Direct Endorsement mortgagees, respectively. In connection with the changes proposed in the Direct Endorsement program, the Department proposed to reorganize, edit and move the Direct Endorsement regulations to part 203. The Department proposed to expand the Direct Endorsement program to virtually all single family programs, and to require mortgagees to process and underwrite mortgages under the Direct Endorsement program in all cases permitted by the Department. This regulatory change will limit the availability of the current procedures which permit mortgagees to submit mortgages for processing to HUD offices.

Section-by-Section Analysis of Changes to Part 203

The following is a section-by-section analysis of public comments and the changes that have been made in the Direct Endorsement provisions in the final rule in response to the public comments.

Section 203.1 Underwriting Procedures

As proposed, § 203.1 will restrict most single family mortgage insurance programs to processing through the Direct Endorsement (DE) procedure. This section is adopted without change in the final rule. Several commenters supported the expanded use of Direct Endorsement. One commenter observed that training will be necessary. HUD offices will continue to provide regular periodic training for mortgagees, as they do now. Offices will be instructed to provide specialized training on specific programs when there is a demand from mortgagees for such training.

Two commenters expressed concern that DE lenders may not be attracted to under-served areas such as rural areas. HUD expects that mortgagees in these areas will establish loan correspondent relationships with Direct Endorsement approved sponsors so that no area will be under-served. In addition, HUD expects many Direct Endorsement approved sponsors to solicit mortgagees in rural areas to be loan correspondents knowing that it may be a source of new business for them.

Another commenter, a loan correspondent, objected to expanded use of Direct Endorsement because it would need to select the sponsor for a particular loan early (instead of selecting the sponsor after HUD processing was completed). The Department does not consider this possible burden a reason for continuing processing by HUD Offices.

The Department emphasizes that processing of loans by HUD Offices is not being eliminated completely. HUD Offices will continue to be responsible for issuing commitments in connection with the initial fifteen cases underwritten by a newly-approved Direct Endorsement mortgagee. Otherwise, the resources of HUD Offices will no longer be used for underwriting under common programs which are less likely to involve unusual underwriting issues. HUD's underwriting efforts will be refocused on the smaller special programs listed in § 203.5, such as the Home Equity Conversion Mortgage demonstration or the Section 237 program for mortgagors who would not normally be acceptable credit risks. The Department will be able to designate additional programs for HUD processing, if warranted, through **Federal Register** notice.

Section 203.3 Approval of Mortgagees for Direct Endorsement

Under the June 15, 1991 rule, § 203.3 was proposed as a republication of the regulations governing approval of Direct Endorsement mortgagees currently contained in § 200.164, in a simplified form, and with a few substantive changes. One commenter objected to the requirement in § 203.3(a) that applications for DE approval be submitted through a Field Office. HUD agrees that this requirement is unnecessary and it has been deleted. Applications may be submitted directly to the Single Family Development Division in HUD Headquarters.

Twelve commenters supported HUD's proposal to permit nationwide HUD approval of DE underwriters. One commenter preferred regional approval, and one opposed a change from local HUD Office approval. Four commenters said that any role of the local HUD Offices should be eliminated, apparently because the commenters perceived the rule as permitting a HUD Office to disapprove a DE underwriter for a particular jurisdiction despite approval from HUD Headquarters. That interpretation is not correct. Local HUD Office approval of an underwriter is necessary only if the mortgagee seeks such approval instead of nationwide approval. On the basis of the comments, HUD continues to believe that nationwide approval of underwriters will simplify the approval process without loss of underwriting quality. The final rule contains the proposed change with minor rewording for clarification.

The question of termination of underwriter approval was not discussed in the proposed text of § 203.3, but was discussed in the preamble of the proposed rule at 56 FR 29106 as follows:

> The underwriter's national approval would only be terminated by HUD Central Office. Each HUD office could terminate an underwriter's approval in that particular field office's jurisdiction when it is determined by the HUD office that such termination is appropriate.

No comments were received on this matter. The Department has concluded that termination of underwriter approval should be covered in the final rule. Accordingly, a sentence has been added to § 203.3(c) that is similar to language in § 203.3(d)(2)(i) concerning termination of a mortgagee's DE approval.

When exercising its discretion to review and approve mortgagees for the Direct Endorsement program, HUD may continue its practice described in HUD Handbook 4000.4 Rev.1, paragraph 2–14, under which the DE approval for some mortgagees is limited to approval only for proposed construction cases utilizing HUD conditional commitments or certificates of reasonable value issued

by the Department of Veterans Affairs (VA). HUD does not, however, intend to permit individual HUD offices to restrict the use of Direct Endorsement for property disposition cases, and this implied restriction on DE approval as stated in paragraph 3–20 is superseded by this final rule.

Two commenters objected to HUD's system for rating DE underwriters. That system is not currently described in regulations and HUD did not propose any relevant change in regulations. Accordingly, the comment is outside the scope of the current rulemaking.

Section 203.5 Direct Endorsement Process

Under the proposed rule, § 203.5 would incorporate the regulations governing the Direct Endorsement process, currently set forth in § 200.163 (a) and (b) (1)–(4), in a simplified form. The program which would NOT be eligible for Direct Endorsement processing are programs authorized by sections 203(n), 203(p), 213, 221(h), 221(i), 225, 233, 237, 255, 809 or 810 of the National Housing Act. This list is the same as in the proposed rule except that section 221(h) has been added and sections 221(j), 247 and 248 have been deleted. Section 221(h) is not an active program at this time, and section 221(j) is a multifamily program that was mistakenly listed in the proposed rule.

The section 247 and 248 programs have been deleted from the list and therefore will be subject to Direct Endorsement processing because of several changed circumstances. First, sufficient experience has now been gained under the Hawaiian Home Lands Program to enable the Department of Hawaiian Home Lands and individual mortgagees to assume a greater share of responsibility for implementing the program. The mortgagees' responsibility will include Direct Endorsement. Second, the Department has determined that the requirement for Field Office processing has severely limited the ability to use the section 248 program to improve the housing conditions of Indians on reservations. The section 248 program is not suitable for most parts of the country, however, and the Department intends to use its discretion to limit the availability of Direct Endorsement processing to those areas where the HUD Field Office is able to carry out certain functions under the program regulations that cannot be carried out by mortgagees. The Department has made conforming amendments to the program regulations at 24 CFR 203.43h and 203.43i to remove requirements that the program operate through commitments, and to correct certain typographical errors.

The preamble to the June 25, 1991 proposed rule (56 FR 29106) noted that existing language on appraisers in the DE regulations was not reproduced due to a pending separate rulemaking on appraisers. That rulemaking would create a new part 267 (24 CFR part 267). Issuance of proposed part 267 has been delayed. Accordingly, this final rule reproduces prior § 200.163(b)(3) as new § 203.5(e) to avoid any gap on this issue until a final version of part 267 takes effect. At such time, § 203.5(e) would be amended to refer to part 267. Section 203.5(e) reflects HUD's recent policy decision announced in Mortgagee Letter 91–51 to accept VA certificates of reasonable value for existing construction. No other substantive changes are being made to the proposed § 203.5 in this final rule.

One commenter had requested that this rule implement section 322 of the National Affordable Housing Act pertaining to selection of appraisers by DE mortgagees. The Department considers that to be outside the scope of the current rulemaking, but it will be covered in part 267.

Sections 203.7, 203.14, 203.17, 203.27, and 203.249

No comments were received on these proposed sections and they are being published in final form without change.

Section 203.248 Waivers

One commenter proposed expansion of the regulatory waiver provision in § 203.248. No substantive change was proposed to that section. Only a technical change reflecting relocation of the mortgagee approval regulation was made to this section, so that this comment is outside the scope of the current rulemaking.

Section 203.255 Insurance of Mortgage

Paragraphs (b) through (e) of § 203.255 were proposed as a replacement of current regulations at § 200.163 (b), (c) and (d), and § 203.255(b). One commenter objected to continuing the current 30-day window period for submitting closed DE loans to HUD for endorsement. HUD had not proposed a change in this regard, however, experience has shown that the 30-day period is often too short to be workable. The final rule extends the period to 60 days.

The final rule contains two changes to the proposed § 203.255(b)(1) concerning appraisal documents. The reference to a form "prescribed by" HUD has been broadened to refer to a form "meeting the requirements" of HUD. This change was made to anticipate HUD's proposed appraisal regulations, which could permit alternatives to a prescribed form. The provision is also revised to recognize the use of certificates of reasonable value by the Department of Veterans Affairs for existing construction.

Three commenters criticized HUD's proposal to make changes to prior § 200.163(d) (which was proposed to be relocated to new § 203.255(c)). In particular, the commenters were concerned with proposed new § 203.255(c)(7), which provides for HUD pre-endorsement review to determine:

> That there is no information known to the Secretary indicating that:
> (i) Any certification or other required document is incomplete, false, misleading, or constitutes fraud or misrepresentation on the part of any party; or
> (iii) The mortgage is otherwise ineligible for insurance.

In HUD's view, as expressed in the preamble to the proposed rule at 56 FR 29107, this new language only would make explicit what has always been implicit in the DE regulations, that HUD's determination of whether or not to endorse a mortgage is based on all information known to HUD concerning compliance with program requirements. HUD has no authority to insure mortgages that violate HUD's own regulations or statutory commands.

Some commenters read the new language as indicating a change to greater HUD involvement. One commenter asserted that HUD would have the same "prior approval" rights as for non-DE mortgages. Another commenter feared that HUD Field Offices would use the new regulation language as a basis for questioning underwriting judgments. That is clearly not intended. Nothing in HUD's proposed language indicated that it would start second-guessing underwriting judgments of the DE mortgagor. If HUD has reason to believe that some of the required underwriting steps have been omitted for a mortgage loan, however, HUD will not be estopped by a mortgagee certification to the contrary from inquiring further. In other words, HUD will insist that DE mortgagees live up to their obligation to comply with existing requirements, but HUD will not substitute its judgment for the mortgagee's regarding whether a mortgage loan should be made if underwritten in accordance with those requirements.

Another commenter was concerned that the regulation would not be consistent with the "incontestability" provision of section 203(e) of the National Housing Act, which permits

HUD to contest a contract of insurance for a mortgage only if there was fraud or misrepresentation on the part of a mortgagee. That provision generally applies to cases which have been endorsed by HUD. It also has some relevance to the pre-endorsement stage for HUD-processed cases where a HUD firm commitment to insure has been issued, since HUD may refuse to honor the contractual obligation represented by the firm commitment on the same grounds that would justify contesting the contract of insurance after endorsement. See *Jayson Investments, Inc.* v. *Kemp*, 746 F. Supp. 807, 818 fn.7 (N.D. Ill. 1990). However, section 203(e) has no applicability to a DE case that has not been endorsed by HUD, since HUD has made no prior finding regarding the insurability of the mortgage and has no contractual obligation to insure.

In order to clarify the limited nature of the HUD pre-endorsement review of DE mortgages, HUD has made some changes in the final version of § 203.255(c). HUD has removed the reference to "incomplete" documents and inserted a reference to "properly completed" documents in § 203.255(b). This change emphasizes that the DE mortgagee's basic responsibilities when submitting a mortgage, as described in paragraph (b), include assuring that only properly completed documents are submitted. If the mortgagee fails in this basic responsibility, then HUD would not proceed with endorsement on the basis of § 203.255(c)(4), rather than § 203.255(c)(7) which focuses on additional information that might come to HUD's attention outside of the normal required DE submissions.

In the final rule, HUD also has revised proposed § 203.255(c)(7). Section 203.255(c)(7) has been made into a separate unnumbered sentence that emphasizes that HUD has the authority to determine whether other information exists that should be considered, while avoiding any implication that HUD owes a duty to look beyond the required documents in any particular case. The language at § 203.255(c)(7)(ii) in the proposed rule has been limited in the final rule so that it refers only to information indicating that the mortgage fails to meet a statutory or regulatory requirement. This avoids any implication of an open-ended HUD search for problems with a DE mortgage submitted for endorsement.

Ordinarily, this provision will be redundant, since the Department has attempted to cover all important statutory and regulatory requirements in its certifications. The additional language is included because a new statutory or regulatory requirement might take effect before HUD was able to modify its handbook containing the certifications. For example, HUD's current DE certifications do not address the limitations on mortgage insurance for secondary residences enacted in section 326 of the National Affordable Housing Act (Pub.L. 101-625, approved November 28, 1990), but DE mortgagees are not permitted to violate section 326, and HUD offices are expected to refuse endorsements of violating mortgages. This final rule will permit HUD to update its certification requirements more rapidly than before, since revision of the specific certifications will no longer require rulemaking. Nevertheless, HUD can still expect to encounter situations where a DE-processed mortgage must be rejected for insurance because of legal limitations on HUD's insurance authority that are not specifically covered by a particular certification. Section 203.255(c)(7)(ii) of the final rule is designed to cover those situations.

For both Direct Endorsement and HUD-processed mortgages the Department has traditionally required a "current payment letter" if two payment due dates have passed when a mortgage is submitted for insurance, and a payment history if three payment due dates have passed. This requirement would have been included in the broad language of the proposed § 203.255(c)(7)(ii). Because of the narrower wording used in the final version of that provision, the Department is including specific language in a new § 203.255(c)(7) to make clear that the Department is continuing its current handbook policy under which defaulted mortgages and mortgages submitted late with an unacceptable payment history may be rejected for insurance. The language reflects one recent policy change to be reflected in handbook revisions—payment histories are required if more than 60 days have passed after closing, rather than three payment due dates.

Conforming and Miscellaneous Changes

Other DE-related conforming changes in this final rule that were not set forth in the proposed rule appear in §§ 200.141, 200.145, 200.146, 200.147, 200.148, 200.150, 200.152, 200.630, 200.926, 203.16a, 203.17, 203.27, 203.43h, 203.51, 203.258, 203.415, 203.441, 203.479, 213.752, 220.253, 221.30, 221.70, 221.252, 221.770, 222.254, 226.252, 227.545, 233.5, 234.25, 234.17, 234.85, 234.256, 237.5, 240.16 and 242.35. Many of these changes involve adaptation for DE purposes of provisions that referred to commitments. Commitments are not issued by HUD as part of DE processing. Most of the other changes simply reflect the new section designations for the DE regulations.

A technical change has also been made to §§ 203.30 and 234.16 to incorporate requirements under the Fair Housing Act of 1988. The lists of discriminatory classifications have been expanded to include familial status and handicap.

Direct Endorsement Citation Chart

A chart showing previous section designations for Direct Endorsement program requirements and the equivalent new section designations appeared in the June 25, 1991 proposed rule at 56 FR 29107-8. The chart remains applicable to the final rule.

Handbook Changes

Management Experience

The final rule at § 202.12(b) republishes the current requirement that approved mortgagees employ trained personnel, competent to perform their assigned responsibilities. In the June 25, 1991 rule, HUD proposed to amend its mortgagee approval handbook to require that a senior corporate officer, with authority over loan production or servicing, have three years experience in the mortgage business or the functional equivalent experience or training instead of one year experience. The Department specifically requested public comments on the types of experience which it should consider as equivalent to three years of mortgage lending. Because no comments were received on this proposal, HUD will implement this new policy. Additionally, § 203.3(b)(1) retains the current requirement of five years experience for mortgagees which seek Direct Endorsement approval due to increased responsibilities associated with that program.

State Licensing

The Department will clarify in the Mortgagee Approval Handbook that the "prudent business standard" required by § 202.12(1)(4) of the regulation includes maintaining State licenses in the States where the mortgagee does business, as is required under § 202.12(h)(1) of this final rule.

Application Fee

The Mortgagee Approval Handbook will also be amended to include the increased application and recertification fees announced in the proposed rule. (See this discussion under § 202.12(k) above.)

Direct Endorsement Certifications

The list of certifications in the Direct Endorsement Handbook will be revised to reference the regulations or other requirements for which the mortgagee must issue a certification of compliance. The Department expects to publish the revised certifications in the revised Direct Endorsement Program Handbook, 4000.4 immediately after the publication of this Single Family rule. Mortgagees may continue to use the Direct Endorsement certifications currently in Handbook 4000.4 Rev. 4 until the later of either the date this rule becomes final or the date the revised Direct Endorsement Handbook is published.

Other Matters

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements of this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and it is expected to affect small and large entities equally.

Environmental Impact

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) in connection with the development of the proposed rule. The Finding of No Significant Impact remains applicable to this final rule, and is available for public inspection and copying Monday through Friday, 7:30 a.m. until 6 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Agenda

This rule was listed as sequence number 1374 in the Department's Semiannual Agenda of Regulations published on November 3, 1992, (57 FR 51392, 51409) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule is limited to imposing additional eligibility and performance requirements on private lenders. No programmatic or policy changes result from its promulgation which would affect existing 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 does not have a potential significant impact on family formation, maintenance and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this rule.

Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance program numbers are: 14.103, 14.108, 14.110, 14.112, 14.116, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.126, 14.127, 14.128, 14.129, 14.130, 14.132, 14.133, 14.135, 14.138, 14.139, 14.140, 14.141, 14.142, 14.149, 14.151, 14.155, 14.156, 14.157, 14.159, 14.162, 14.163, 14.164, 14.165, 14.166, 14.167, 14.168, 14.169, 14.170, 14.171, 14.172, 14.173, 14.174, 14.175, 14.177, 14.179, and 14.180.

List of Subjects

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Government procurement, Loan programs, Drug abuse, Reporting and recordkeeping requirements.

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 30

Administrative practice and procedure, Civil money penalties, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 226

Government employees, Mortgage insurance.

24 CFR Part 227

Federally affected areas, Military personnel, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 237

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 240

Mortgage insurance.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 24, 25, 30, 200, 202, 203, 204, 206, 207, 213, 220, 221, 222, 226, 227, 233, 234, 237, 240, 241, 242 and 244 are amended as follows.

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for 24 CFR part 24 continues to read as follows:

Authority: Executive Order 12549, 41 U.S.C. 701 et seq.; 42 U.S.C. 3535(d).

2. In § 24.700, the first sentence is revised to read as follows:

§ 24.700 General.

Officials who may order a limited denial of participation. A Regional Administrator, Office Manager, Director of an Office of Indian Programs or the Deputy Assistant Secretary for Single Family Housing is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD-FHA approved mortgages. * * *

3. In § 24.710, paragraph (a)(3) is revised to read as follows:

§ 24.710 Period and scope of a limited denial of participation.

(a) * * *

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by the Deputy Assistant Secretary for Single Family Housing in which case the sanction may be imposed on a nationwide basis or a more restricted basis.

* * * * *

PART 25—MORTGAGEE REVIEW BOARD

4. The authority citation for 24 CFR part 25 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

5. In § 25.9, paragraphs (b), (h) and (u) are revised to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(b) The failure of a mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, or failure to deposit these funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration except as otherwise provided in writing by the Assistant Secretary for Housing—Federal Housing Commissioner;

* * * * *

(h) Failure of an approved mortgagee to meet or maintain the applicable net worth, liquidity or warehouse line of credit requirements of 24 CFR part 202 pertaining to net worth, liquid assets, and warehouse line of credit or other acceptable funding plan;

* * * * *

(u) Failure to pay the application and annual fees required by 24 CFR part 202;

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

6. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1735f-14, 1735f-15, 1701q-1, 1723i; 15 U.S.C. 1717a; 12 U.S.C. 1703; 42 U.S.C. 3535(d).

7. In § 30.320, paragraph (c) introductory text and paragraph (k) are revised to read as follows:

§ 30.320 Violations by mortgagees and lenders.

* * * * *

(c) Fails:

* * * * *

(k) Makes a payment that is prohibited under 24 CFR 202.12(p);

* * * * *

PART 200—INTRODUCTION

8. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

9. In § 200.141, paragraph (b) is revised to read as follows:

§ 200.141 Procedure in general.

* * * * *

(b) Except as set forth in §§ 203.3(b)(4) and 203.5(e), commitments are not issued by HUD under the Direct Endorsement program.

10. In § 200.145, the last sentence of paragraph (b) is revised to read as follows:

§ 200.145 Technical analysis, underwriting processing and inspections.

* * * * *

(b) * * * Except as set forth in §§ 203.3(b)(4) and 203.5(e), commitments are not issued by HUD under the Director Endorsement program.

* * * * *

11. In § 200.146, paragraph (a) is revised to read as follows:

§ 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements, a commitment for insurance is issued. Except as set forth in §§ 203.3(b)(4) and 203.5(e), commitments are not issued by HUD under the single family program of

Direct Endorsement program. Under this program the Department determines whether the mortgage is eligible for insurance by engaging in the pre-endorsement review set forth in § 203.255(c).

* * * * *

12. In § 200.147, the last sentence of this section is revised to read as follows:

§ 200.147 Issuance of commitment.

* * * Except as set forth in §§ 203.3(b)(4) and 203.5(e), commitments are not issued by HUD under the Direct Endorsement program.

13. In § 200.148, the third sentence of paragraph (a)(2) is revised to read as follows:

§ 200.148 Types of commitments.

(a) * * *

(2) * * * Mortgagees approved for Direct Endorsement may use the MCC procedure as a "Master Appraisal Report" (MAR) process. * * *

* * * * *

14. In § 200.150, paragraph (b) is revised to read as follows:

§ 200.150 Request for endorsement.

* * * * *

(b) For applications involving mortgages originated under the Direct Endorsement program, the mortgagee shall request endorsement for insurance as provided in § 203.255(b).

15. Section 200.152 is revised to read as follows:

§ 200.152 Endorsement for insurance.

(a) When it has been determined that the terms and conditions of the commitment have been fully complied with, the Secretary insures the mortgage and evidences the insurance by the issuance of a Mortgage Insurance Certificate for single family mortgages or by the signature of the Secretary's authorized agent in the endorsement panel on the mortgage for multifamily mortgages.

(b) For applications involving mortgages originated under the Direct Endorsement program, the Secretary shall determine whether the mortgage is eligible for insurance as provided in § 203.255(c). If the mortgage is determined to be eligible, the Secretary insures the mortgage and evidences the insurance by issuance of a Mortgage Insurance Certificate.

(c) After the mortgage is insured, the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are a part of the insurance contract.

16. Sections 200.163, 200.164 and 200.164a are removed.

17. In § 200.926, paragraph (a)(2) is revised to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

(a) * * *

(2) *Applicability of standards to new construction.* The standards referenced in paragraph (a)(1) of this section are applicable to structures which are:

(i) Approved for insurance or other benefits prior to the start of construction, including approval under the Direct Endorsement process described in § 203.5 of this chapter;

(ii) Approved for insurance or other benefits based upon participation in an insured warranty program; and

(iii) Insured as new construction based upon a Certificate of Reasonable Value issued by the Department of Veterans Affairs.

* * * * *

18. In § 200.1105, the definition of "Processing entity" is revised to read as follows:

§ 200.1105 Definitions.

* * * * *

Processing entity means the person or entity that is responsible for making eligibility and related determinations under any of the programs referred to in § 200.1103. The processing entity is specified in the regulations governing the covered program, and may include (but is not limited to) HUD or a mortgagee or Title I lender approved under part 202 of this chapter.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

19. 24 CFR part 202 is amended by revising the heading of part 202 as set forth above; by designating current §§ 201.1 through 202.8 as subpart A, and adding a heading to subpart A to read "Subpart A—Approval of Title I Lending Institutions"; and by revising the authority citation to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

20. In § 202.2, paragraphs (c) and (d) are revised to read as follows:

§ 202.2 Definitions.

As used in this part, the term:

* * * * *

(c) *Supervised institution* means a financial institution which is a member of the Federal Reserve System or whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) *Nonsupervised institution* means a financial institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and which is not a supervised institution under paragraph (c) of this section or a governmental institution under paragraph (e) of this section.

* * * * *

21. In § 202.3, paragraph (a) is revised to read as follows:

§ 202.3 General approval requirements.

* * * * *

(a) It shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership meeting the requirements of paragraphs (a)(1) through (a)(4) of this section. It shall be authorized under Federal or State law or regulation to originate or purchase consumer and mortgage loans, or it shall be a Federal, State or municipal agency.

(1) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(2) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c) and (i) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are property improvement or manufactured home loan lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(3) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All Title I loans held by the partnership shall be transferred to an approved Title I lender prior to the termination of the partnership. The partnership shall specifically be authorized to continue its existence if a partner withdraws.

(4) The Secretary must be notified immediately of any amendments to the partnership agreement which would affect the partnership's actions under any mortgage insurance program administered by the Secretary.

* * * * *

22. Part 202 is amended by adding a new subpart B to read as follows:

Subpart B—Approval of Mortgagees

Sec.
202.10 Definitions.
202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.
202.12 General approval requirements.
202.13 Supervised mortgagees.
202.14 Nonsupervised mortgagees.
202.15 Loan correspondents.
202.16 Investing mortgagees.
202.17 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.
202.18 Approval for servicing.
202.19 Reporting requirements.

Subpart B—Approval of Mortgagees

§ 202.10 Definitions.

As used in this subpart:

(a) *Mortgage* means a mortgage as defined in this chapter, or a loan authorized for insurance under Title II of the National Housing Act;

(b) *Mortgagee* means a mortgage lender which meets the definition of either a supervised mortgagee at § 202.13, a nonsupervised mortgagee at § 202.14, a loan correspondent at § 202.15, an investing mortgagee at § 202.16, or a governmental institution at § 202.17.

§ 202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.

(a) *Approval.* (1) A mortgagee may be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except Title I of the Act, upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. Approval of the application by the Secretary shall constitute:

(i) The Secretary's agreement that the mortgagee shall be considered an approved mortgagee except as otherwise ordered by the Mortgagee Review Board, or an officer or subdivision of the Department of Housing and Urban Development to which the Mortgagee Review Board has delegated its power, unless the mortgagee voluntarily relinquishes its approval;

(ii) The mortgagee's agreement to comply at all times with the General approval requirements of § 202.12, and the special requirements for the class of mortgagee, at §§ 202.13, 202.14, 202.15, 202.16 or 202.17, for which it was approved; and

(iii) An origination approval agreement under which approval to originate mortgages for insurance may be terminated as provided in paragraph (d) of this section, in addition to any actions of the Mortgagee Review Board authorized by part 25 of this title.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs.

(3) Separate approval is required under subpart A of this part for participation in the Title I Program, and additional approval is required for participation in the Title II Direct Endorsement program or for the Coinsurance Program as provided in § 203.3 or 24 CFR part 204.

(4) Approval of mortgagees may be restricted to geographic areas designated by the Secretary or may be approved to operate on a nationwide basis.

(5) A mortgagee approved under this subpart may, with the approval of the Secretary, designate another approved mortgagee as authorized agent for the purpose of submitting applications for mortgage insurance in its name and or its behalf if:

(i) The property is located in an area determined by the Secretary to be under-served;

(ii) The mortgagee is approved as a supervised mortgagee under § 202.13 and the authorized agent is an affiliate or subsidiary of the mortgagee; or

(iii) The mortgagee is approved under § 202.17(d).

(b) *Recertification of approval.* On each anniversary of the approval of a mortgagee, the Secretary shall undertake a recertification procedure to determine whether continued approval is appropriate. The Secretary shall review the yearly verification report required by § 202.12(h)(3) and other pertinent documents, determine whether all application and annual fees which are due have been paid, and request any additional information needed to make a determination regarding continuation of approval. For each mortgagee which is approved before January 8, 1993, the recertification procedure on the first anniversary of approval occurring after January 8, 1993, shall include an origination approval agreement under which approval to originate mortgages for insurance may be terminated as provided in paragraph (d) of this section.

(c) *Withdrawal and suspension of approval.* Mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in part 25 of this title.

(d) *Termination of origination approval agreement*—(1) *Definitions.* For purposes of this paragraph (d):

(i) *Normal rate* for defaults and claims means the rate of defaults and claims on HUD insured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

(ii) *Defaults* means insured mortgages in default for 90 or more days within one year after endorsement.

(iii) *Claims* means insured mortgages for which the Secretary pays an insurance claim within 18 months after endorsement.

(2) *Review of defaults and claims.* Every three months, the Secretary shall review the number of defaults and claims on mortgages originated by each mortgagee in the geographic area served by a HUD field office. The Secretary may also review the performance of a mortgagee's branch offices individually and may impose the sanctions provided for in this section on a branch as well as on a mortgagee as a whole.

(3) *Termination.* (i) If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during the Federal fiscal year which was in excess of 200 percent of the normal rate, and in excess of the national default and claim rate for insured mortgages, the Secretary shall notify the mortgagee that its origination approval agreement shall be terminated 60 days after notice was given, without action by the Mortgagee Review Board, except as provided in paragraph (d)(3)(iii) of this section. For this purpose, a mortgage is considered to be originated in the same Federal fiscal year in which it is endorsed for insurance.

(ii) Before the Secretary sends the termination notice the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under-served areas the Secretary may determine not to terminate the approval agreement.

(iii) Prior to termination the mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or his or her designee. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice and may place the mortgagee on credit watch status.

(4) *Credit watch status.* If a mortgagee has a rate of defaults and claims on insured mortgages originated in an area during a Federal fiscal year which was greater than 150 percent but equal to or less than 200 percent of the normal rate, the Secretary shall notify the mortgagee that it is being placed on credit watch

status. For this purpose, a mortgage is considered to be originated in the same Federal fiscal year in which it is endorsed for insurance. Before the credit watch notice is sent the Secretary shall review the census tract area concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in under served areas the Secretary may determine not to place the mortgagee on credit watch status.

(5) *Effect of credit watch.* Insured mortgages originated during a six month period from the date of the credit watch notice will be reviewed for excessive default rates. A mortgagee will be removed from credit watch status if the rate of defaults and claims for the six month tracking period decreases to 150 percent or less one year after that six month tracking period. The origination approval agreement for a mortgagee subject to credit watch may be terminated if the mortgagee's rate of defaults and claims on insured mortgages originated in an area during the six month tracking period is more than 150 percent of the normal rate one year after that six month tracking period. The Secretary shall provide 60 days notice and an opportunity for an informal conference as required by § 202.11(d)(3) to a mortgagee which will have its origination approval agreement terminated subsequent to a credit watch.

(e) *Effects of termination of origination approval agreement.* Termination of the origination approval agreement shall not affect:

(1) The Secretary's ability to insure eligible mortgages, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage were approved before the termination by the Direct Endorsement mortgagee or by a firm commitment issued by the Secretary, but no other mortgages originated by the mortgagee shall be insured unless a new originated approval agreement is accepted by the Secretary.

(2) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations associated with insured mortgages;

(3) A mortgagee's right to reapply for a new origination approval agreement provided that the mortgagee is still an approved mortgagee, the general approval requirements at § 202.12 and the specific requirements of § 202.13 through § 202.19 continue to be met, and the Secretary determines that the underlying causes for termination have been satisfactorily remedied; or

(4) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

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§ 202.12 General approval requirements.

To be approved for participation in the mortgage insurance programs authorized by the National Housing Act, except Title I of the Act, and to maintain approval, a mortgagee shall meet the general requirements of this section (except as provided in § 202.17(b)) and the specific requirements of § 202.13 through § 202.19, as appropriate.

(a) *Business form.* It shall be a corporation or other chartered institution, a permanent organization having succession or a partnership. All partnerships must meet the requirements of paragraphs (a)(1) through (a)(4) of this section.

(1) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(2) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c) and (g) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(3) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages held by the partnership shall be transferred to a HUD approved mortgagee prior to the termination of the partnership. The partnership shall specifically be authorized to continue its existence in the event that a partner withdraws.

(4) The Secretary must be notified immediately of any amendments to the partnership agreement which would affect the partnership's actions under any mortgage insurance program administered by the Secretary.

(b) *Employees.* It shall employ competent personnel trained to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with applicable regulations, to the extent the mortgagee engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) *Escrows.* It shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Related laws.* It shall comply with the provisions of the Fair Housing Act, Executive Order 11063, Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974, and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) *Servicing.* It shall comply with the servicing responsibilities contained in subpart C of part 203 and in part 207, and with all other applicable regulations contained in this title 24, and with such additional conditions and requirements as the Secretary may impose.

(g) *Business changes.* It shall provide prompt notification, on a form prescribed by the Secretary, of all changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business.

(h) *Reports.* It shall file the following reports, records and documentation:

(1) Upon application for approval and with each annual recertification, a certification that the mortgagee has not been refused a license and has not been sanctioned by any State or States in which it will originate insured mortgages;

(2) A yearly verification report on a form prescribed by the Secretary;

(3) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for two consecutive

quarters or until the next recertification, whichever is the longer period; and

(4) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership or any transfer of control to a Federal or State supervisory agency.

(i) *Financial statements.* It shall, upon request by the Secretary, submit a copy of its latest financial statement, submit such information as the Secretary may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) *Quality control plan.* It shall implement a written Quality Control Plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding mortgage origination and servicing.

(k) *Fees.* A mortgagee, other than one meeting the requirements of § 202.17, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times the Secretary may require.

(l) *Ineligibility.* At the time of application and at all times while approved as a mortgagee, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under part 24 or part 25 of this title, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to be an approved mortgagee;

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations; or

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility.

(m) *Branch offices.* It may, only upon approval by the Secretary, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(n) *Net worth.* It shall have and maintain a net worth, in assets acceptable to the Secretary, of the following amounts.

(1) Supervised mortgagees under § 203.13 and non-supervised mortgagees under § 202.14, including sponsors of loan correspondents, shall have a net worth at least equal to $250,000, plus one percent of the volume of mortgages in excess of $25,000,000, up to a maximum required net worth of $1,000,000. Mortgage volume shall include insured mortgages originated, serviced, and purchased by the mortgagee in the preceding fiscal year of the mortgagee. To determine mortgage volume, the Secretary will add the aggregate original principal amount of the mortgages that were endorsed for insurance during the mortgagee's prior fiscal year and the aggregate principal amount of all insured mortgages serviced except those that were originated by the mortgagee or purchased from its loan correspondent(s) by the mortgagee at the end of the mortgagee's prior fiscal year. The mortgage volume for loan sponsors shall also include the aggregate principal amount of mortgages purchased from its loan correspondent(s) during the mortgagee's prior fiscal year.

(2) Mortgagees approved for participation only in the multifamily mortgage insurance programs under § 202.11(a)(2) are required to have a net worth of at least $250,000.

(3) Mortgagees which are loan correspondents under § 202.15 shall have a net worth of at least $50,000 and at least an additional $25,000 net worth for each branch office of the loan correspondent up to a combined maximum required net worth of $250,000.

(4) Mortgagees approved under §§ 202.16 and 202.17 are not required to maintain a specific net worth.

(o) *Effective date.* Mortgagees approved on or after January 8, 1993, shall be required to have a net worth as required by § 203.12(n) upon approval, except supervised and non-supervised mortgagees may have a net worth of $250,000 for the first year of approval. All mortgagees approved before January 8, 1993, must meet the net worth requirement of paragraph (n) of this section by January 9, 1995.

(p) *Conflict of interest.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration as may be approved by the Secretary may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(q) *Liquid assets.* It shall maintain liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

(r) *Fidelity bond.* Except for loan correspondents, the mortgagee shall maintain fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or alternative insurance coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

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§ 202.13 Supervised mortgagees.

(a) *Definition.* A supervised mortgagee is a financial institution which is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) *General functions.* A supervised mortgagee may originate mortgages, submit applications for mortgage insurance, and may purchase, hold, service or sell insured mortgages.

(c) *Special requirement.* In addition to the general approval requirements in § 202.12, a supervised mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(d) *Trust companies.* Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 202.14 Nonsupervised mortgagees.

(a) *Definition.* A nonsupervised mortgagee is a financial institution that has as its principal activity the lending or investment of funds in real estate mortgages, and which is not approved under § 202.13, § 202.15, § 202.16, or § 202.17 of this chapter.

(b) *General functions.* A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service or sell insured mortgages.

(c) *Special requirements.* In addition to the general approval requirements in

§ 202.12, a non-supervised mortgagee shall meet the following requirements:

(1) Except for multifamily mortgagees, it shall have and maintain a warehouse line of credit or other mortgage funding program acceptable to the Secretary which is adequate to fund the mortgagee's average 60 day origination production pipeline, but not less than a $1,000,000 warehouse line of credit or funding program.

(2) It shall file an audit report with the Secretary within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Secretary), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds;

(ii) A report on compliance tests prescribed by the Secretary; and

(iii) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

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§ 202.15 Loan correspondents.

(a) *Definitions.*

A *loan correspondent* is a mortgagee approved by the Secretary and which either has as its principal activity the origination of mortgages for sale or transfer to a sponsor or sponsors or meets the definition of a supervised mortgagee in § 202.13(a) but applies for approval as a loan correspondent.

A *sponsor* is a mortgagee which holds a valid approval agreement, is approved to participate in the Direct Endorsement program, and meets the net worth requirement at § 202.12(n)(1).

(b) *General functions.* A loan correspondent may submit applications for the insurance of mortgages. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Secretary, nor may it hold, purchase or service insured mortgages in its own portfolio.

(c) *Special requirements.* In addition to the general approval requirements in § 202.12, a loan correspondent shall meet the following requirements, as applicable:

(1) A loan correspondent shall close all mortgages in its own name. For mortgages not processed through Direct Endorsement under § 203.5 and § 203.255(a) of this chapter, the mortgages must be both underwritten and closed in the loan correspondent's own name. For mortgages processed through Direct Endorsement under § 203.5 and § 203.255(b) of this chapter, underwriting shall be the responsibility of the Direct Endorsement sponsor and the mortgage shall be closed in the loan correspondent's own name.

(2) Its approval must be requested by one or more sponsors that are approved mortgagees under § 202.13, § 202.14, or § 202.17.

(3) It shall comply with the warehouse line of credit requirements of § 202.14(c)(1), unless there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(4) A loan correspondent and its sponsor or sponsors shall promptly notify the Secretary upon termination of any loan correspondent agreement.

(5) It shall file audit reports in accordance with § 202.14(c)(2).

(6) Each sponsor shall be responsible to the Secretary for the actions of its loan correspondent in originating mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary shall presume that the sponsor has knowledge of the actions of its loan correspondent in originating mortgages and is responsible for those actions unless the sponsor can rebut the presumption with affirmative evidence.

§ 202.16 Investing mortgagees.

(a) *Definition and general functions.* An investing mortgagee is an organization, including a charitable or nonprofit institution or pension fund, that is not approved under other sections of this part. It may purchase, hold or sell insured mortgages, but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Secretary.

(b) *Special requirements.* In addition to the general approval requirements of § 202.12, except § 202.12(n), an investing mortgagee shall meet the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

(2) It has, or has arranged for, funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

§ 202.17 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) *Definition and general functions.* Subject to the general approval requirements of § 202.12, except § 202.12(n), a Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association may be an approved mortgagee and may originate, purchase, service or sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) *Public Housing Authorities and State Housing Agencies.* Under such terms and conditions as the Secretary may prescribe, Public Housing Agencies or their instrumentalities, and State Housing agencies may be approved as mortgages for the purpose of originating and holding insured multifamily mortgages funded by issuance of tax exempt obligations by the agency.

(c) *Audit requirements.* Since the insuring of mortgages under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in part 44 of this title, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at part 44 of this title.

(d) *Authorized agents.* A mortgagee approved under this section may, with the approval of the Secretary, designate another approved mortgagee as authorized agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

§ 202.18 Approval for servicing.

After January 10, 1994, all mortgagees who wish to service FHA-insured loans must be approved by the Secretary under § 202.13 (supervised mortgagees), § 202.14 (non-supervised mortgagees), on § 202.17 (governmental institutions).

23. Section 203.8 is redesignated as a new § 202.19; all references to "Commissioner" in the newly redesignated § 202.19(a) (2) and (b) are changed to "Secretary"; paragraph (a)(1) is revised to read as set forth below; and paragraph (b) is amended by revising the words "If a mortgagee approved for participation in the HUD–FHA insurance programs under § 203.1 through § 203.7 of this part is notified by the Commissioner that it had a rate

of early serious defaults or early claims on FHA-insured mortgages during the preceding year" to read "If a mortgagee approved for participation in the insurance programs under §§ 202.10 through 202.18 of this part is notified by the Secretary that it had a rate of early serious defaults or early claims on HUD-insured mortgages during the preceding year,".

§ 202.19 Report requirements.

(a) *Definitions.* * * *

(1) *Normal rate* for early serious defaults and early claims means the rate of defaults and claims on HUD-insured mortgages for the geographic area served by a HUD Field Office, or other area designated by the Secretary, in which the mortgagee originates mortgages.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

24. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

25. 24 CFR part 203 is amended by revising the part heading as set forth above; by revising the heading of subpart A to read "Subpart A—Eligibility Requirements and Underwriting Procedures"; by revising the first undesignated centerhead under subpart A entitled "Approval of Mortgages" to read "Direct Endorsement Process and Commitments"; by revising the second undesignated centerhead under subpart A entitled "Application and Commitment" to read "Miscellaneous Regulations" and placing it immediately before § 203.9; by revising §§ 203.1, 203.3, 203.5, 203.7 and 203.14; and by removing and reserving §§ 203.2, 203.4, 203.6, 203.10, 203.11, and 203.13; to read as follows:

§ 203.1 Underwriting procedures.

The principal underwriting procedure for single family mortgages is the Direct Endorsement procedure described in § 203.5. Processing through HUD offices as described in § 203.7, with issuance of commitments, is available only for mortgages which are not eligible for Direct Endorsement processing under § 203.5(b), or to the extent required by § 203.3(b)(4), § 203.3(d)(1), or as determined by the Secretary.

* * * * *

§ 203.3 Approval of mortgagees for Direct Endorsement.

(a) *Direct Endorsement approval.* To be approved for the Direct Endorsement program set forth in § 203.5, a mortgagee must be an approved mortgagee meeting the requirements of §§ 202.13, 202.14 or 202.17 and this section.

(b) *Special requirements.* The mortgagee must establish that it meets the following qualifications.

(1) The mortgagee has five years of experience in the origination of single family mortgages. The Secretary will approve a mortgagee with less than five years experience in the origination of single family mortgages if a principal officer has had a minimum of five years of managerial experience in the origination of single family mortgages.

(2) The mortgagee has on its permanent staff an underwriter approved by the Secretary, and authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgages through the Direct Endorsement procedure. The technical staff utilized by the mortgagee to perform appraisals and inspections must be approved by the Secretary. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a panel approved by the Secretary. The mortgagee shall use appraisers permitted by § 203.5(e).

(3) The mortgagee's underwriter and technical staff shall satisfactorily complete a training program on HUD underwriting requirements.

(4) The mortgagee must submit initially 15 mortgages, processed in accordance with the requirements set forth under § 203.5 and § 203.255. The documents required by § 203.255 will be reviewed by the Secretary and, if acceptable, commitments will be issued prior to endorsement of the loans for insurance. If the underwriting and processing of these 15 mortgages is satisfactory, then the mortgagee may be approved to close subsequent mortgages and submit them directly for endorsement for insurance in accordance with the process set forth in § 203.255. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (d)(2) of this section.

(5) The mortgagee shall promptly notify those HUD offices which have granted approval under this section of any changes that affect qualifications under this section.

(c) *Approval of underwriters; termination of approval.* An underwriter may be approved by the Secretary to underwrite Direct Endorsement mortgages nationwide. Instead of nationwide approval, an underwriter also may be approved by each HUD office in whose jurisdiction the underwriter seeks to conduct business. An underwriter's approval may be terminated in a particular jurisdiction by the local HUD office or on a nationwide basis by HUD Central Office.

(d) *Mortgagee sanctions.* Depending upon the nature and extent of the noncompliance with the requirements applicable to the Direct Endorsement process, as determined by the Secretary, the Secretary may take any of the following actions:

(1) *Probation.* The Secretary may place a mortgagee on Direct Endorsement probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the Direct Endorsement procedure. Such probation is distinct from probation imposed by the Mortgagee Review Board under part 25 of this chapter. During the probation period specified by this section, the mortgagee may continue to process Direct Endorsement mortgages, subject to conditions required by the Secretary. The Secretary may require the mortgagee to:

(i) Process mortgages in accordance with paragraph (b)(4) of this section;

(ii) Submit to additional training;

(iii) Make changes in the Quality Control Plan required by § 202.12(j); and

(iv) Take other actions, which may include, but are not limited to, periodic reporting to the Secretary, and submission to the Secretary of internal audits.

(2) *Termination of Direct Endorsement approval.*

(i) A mortgagee's approval to participate in the Direct Endorsement program may be terminated in a particular jurisdiction by the local HUD office or on a nationwide basis by HUD Central Office. The HUD office instituting the termination action shall provide the mortgagee with written notice of the grounds for the action and of the right to an informal hearing before the office initiating the termination action. Such hearing shall be expeditiously arranged, and the mortgagee may be represented by counsel. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under part 25 of this title.

(ii) After consideration of the materials presented, the decision maker shall advise the mortgagee in writing whether the termination is rescinded, modified or affirmed.

(iii) The mortgagee may appeal such decision to the Deputy Assistant

Secretary for Single Family Housing or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

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* * * * *

§ 203.5 Direct Endorsement process.

(a) *General.* Under the Direct Endorsement program, the Secretary does not review applications for mortgage insurance or issue conditional or firm commitments, except to the extent required by § 203.3(b)(4), § 203.3(d)(1), or as determined by the Secretary. Under this program, the mortgagee determines that the proposed mortgage is eligible for insurance under the applicable program regulations, and submits the required documents to the Secretary in accordance with the procedures set forth in § 203.255. This subpart provides that certain functions shall be performed by the Secretary (or Commissioner), but the Secretary may specify that a Direct Endorsement mortgagee shall perform such an action without specific involvement or approval by the Secretary, subject to statutory limitations. In each case, the Direct Endorsement mortgagee's performance is subject to pre-endorsement and post-endorsement review by the Secretary under § 203.255 (c) and (e).

(b) *Eligible programs.* All single-family mortgages authorized for insurance under the National Housing Act shall be originated through the Direct Endorsement program, except mortgages authorized under sections 203(n), 203(p), 213(d), 221(h), 221(i), 225, 233, 237, 255, 809 or 810 of the National Housing Act, and any other insurance programs announced by **Federal Register** notice. The provision contained in § 221.55 of this chapter regarding deferred sales to displaced families is not available in the Direct Endorsement program.

(c) *Underwriter due diligence.* A Direct Endorsement mortgagee shall exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the mortgagee would be entirely dependent on the property as security to protect its investment. Mortgagee procedures that evidence such due diligence shall be incorporated as part of the Quality Control Plan required under § 202.12(j) of this chapter. The Secretary shall publish guidelines for Direct Endorsement underwriting procedures in a handbook, which shall be provided to all mortgagees approved for the Direct Endorsement procedure. Compliance with these guidelines is deemed to be the minimum standard of due diligence in underwriting mortgages.

(d) *Mortgagor's income.* The mortgagee shall evaluate the mortgagor's credit characteristics, adequacy and stability of income to meet the periodic payments under the mortgage and all other obligations, and the adequacy of the mortgagor's available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures.

(e) *Appraisal.* This mortgagee shall appraise the property, using an appraiser assigned by HUD from its current fee panel or a staff appraiser approved by HUD. In those cases where the mortgagee has a financial interest in, is owned by or is affiliated with a building or selling entity, the mortgagee shall use an appraiser and inspector assigned by HUD from its fee panel. In lieu of appraising the property, the mortgagee may utilize a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value.

* * * * *

§ 203.7 Commitment process.

For single-family mortgage programs which are not eligible for Direct Endorsement processing under § 203.5, the mortgagee shall submit an application for mortgage insurance on a form prescribed by the Secretary, prior to making the mortgage. If:

(a) A mortgage for a specified property has been accepted for insurance through issuance of a conditional commitment by the Secretary or a certificate of reasonable value by the Department of Veterans Affairs, and

(b) A specified mortgagor and all other proposed terms and conditions of the mortgage meet the eligibility requirements for insurance as determined by the Secretary, the Secretary shall approve the application for insurance by issuing a firm commitment setting forth the terms and conditions of insurance.

* * * * *

§ 203.14 Builders' warranty.

Applications relating to proposed construction must be accompanied by an agreement in form satisfactory to the Secretary, executed by the seller or builder or such other person as the Secretary may require, and agreeing that in the event of any sale or conveyance of the dwelling, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in form satisfactory to the Secretary warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Secretary) on which the Secretary has based on the valuation of the dwelling. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Secretary with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

26. Section 203.16a is amended by adding a new paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 203.16a Mortgagor and mortgagee requirement for maintaining flood insurance coverage.

(a) If the mortgage is to cover property that:

(1) Is located in an area designated by the Federal Emergency Management Agency (FEMA) as a flood plain area having special flood hazards; or

(2) Is otherwise determined by the Commissioner to be subject to a flood hazard, and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property, the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage insurance commitment, to obtain and to maintain NFIP flood insurance coverage on the property during such time as the mortgage is insured.

(b) No mortgage shall be insured which covers property located in an area that has been identified by FEMA as an area having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program, and such insurance is obtained by the mortgagor. Such requirement for flood insurance shall be effective July 1, 1975, or one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards, whichever is later.

(c) The flood insurance shall be maintained during such time as the mortgage is insured in an amount at least equal to either the outstanding balance of the mortgage, less estimated

land costs, or the maximum amount of NFIP insurance available with respect to the property, whichever is less.

27. In § 203.17, paragraphs (c)(3) and (d) are revised to read as follows:

§ 203.17 Mortgagee provisions.

* * * * *

(c) * * *

(3) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgage is executed (or the date a construction mortgage is converted to a permanent mortgage, if applicable).

(d) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization.

* * * * *

28. In § 203.27, paragraphs (a)(3)(v) and (d) and revised to read as follows:

§ 203.27 Charges, fees or discounts.

(a) * * *

(3) * * *

(v) Fees paid to an appraiser or inspector approved by the Commissioner for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph (a)(3) if the mortgagee is permitted by applicable regulations to use the services of staff appraisers and inspectors for processing mortgages, and does so, the mortgagee may collect from the mortgagor the reasonable and customary amounts for such appraisals and inspections.

* * * * *

(d) Before the insurance of any mortgage, the mortgagee shall furnish to the Secretary a signed statement in a from satisfactory to the Secretary listing any charge, fee or discount collected by the mortgagee from the mortgagor. All charges, fees or discounts are subject to review by the Secretary both before and after endorsement under § 203.255.

* * * * *

29. In § 203.30, paragraph (a) is revised to read as follows:

§ 203.30 Certificate of nondiscrimination by the mortgagor.

* * * * *

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, national origin, familial status (except as provided by law), or handicap.

* * * * *

30. In § 203.43h, paragraph (b)(1), the first sentence of paragraph (b)(2), paragraphs (d) introductory text, (d)(3) and (f) are revised to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

(b) * * *

(1) *Enforcement.* If HUD's Field Office Manager determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing commitments for the insurance of mortgages from tribal members, instruct Direct Endorsement mortgagees within the jurisdiction of the Field Office to cease approving mortgages, and cease insuring mortgages except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have occurred within 60 days after the date of the notice by HUD that foreclosure was completed.

(2) *Review.* If HUD's Field Office Manager acts under the first sentence of paragraph (b)(1) of this section, HUD may notify the tribe of the reasons for such action and that the tribe may, within 60 days after notification of HUD's action, file a written appeal with the Field Office Manager. * * *

* * * * *

(d) *Construction advances.* The Commissioner may issue a commitment for the insurance of advances made during construction and a Direct Endorsement mortgagee may request insurance of a mortgage that will involve the insurance of advances made during construction. The Commissioner will insure advances made by the mortgagee during construction if all of the following conditions are satisfied:

* * * * *

(3) The advances are made only as provided in the commitment or the approval by the Direct Endorsement underwriter;

* * * * *

(f) *First lien.* The first lien requirement under this part is implemented where the mortgage is filed in the State recording system and is a first lien under that system, even though the leasehold interest securing the mortgage is located on Indian land and filed with Bureau of Indian Affairs, U.S. Department of the Interior. Any tribal government whose courts have jurisdiction to hear foreclosures must also:

(1) Enact a law satisfactory to the Commissioner providing for the satisfaction of FHA-insured and Secretary-held mortgages before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied; or

(2) Enact a law providing that State law shall determine the priority of liens against the property.

* * * * *

30a. In § 203.43i, the paragraph (d) introductory text, paragraph (g) introductory text, and paragraph (g)(2) are revised to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(d) *Conditions for endorsement.* Commitments to insure mortgages under this section will only be issued and requests for insurance by Direct Endorsement mortgagees will only be granted where the Department of Hawaiian Home Lands:

* * * * *

(g) *Construction advances.* The Secretary may issue a commitment for the insurance of advances made during construction and a Direct Endorsement mortgagee may request insurance of a mortgage that will involve the insurance of advances made during construction. The Secretary will insure advances made by the mortgagee during construction if the Secretary has determined that no feasible financing alternative is available and if:

* * * * *

(2) The advances are made only as provided in the commitment or the approval by the Direct Endorsement underwriter;

* * * * *

30b. In § 203.50, paragraph (h) is revised to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(h) The Commissioner may issue a commitment for the insurance of, and a Direct Endorsement mortgagee may request insurance of, advances made during rehabilitation or for insurance upon completion of rehabilitation.

* * * * *

31. In § 203.51, paragraph (2) is revised to read as follows:

§ 203.51 Applicability.

* * * * *

(2) In accordance with the Direct Endorsement program, if the approved underwriter of the mortgagee signs the appraisal report or master appraisal report for the property on or after September 24, 1990; or

* * * * *

32. Section 203.248 is revised to read as follows:

§ 203.248 Waivers.

On a case-by-case basis, the Secretary may waive any requirement of this subpart not required by statute, if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds of forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be redelegated.

33. Section 203.249 is revised to read as follows:

§ 203.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and shall not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan or the Secretary has issued a firm commitment. In addition, such amendment shall not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement underwriter.

34. Section 203.255 is revised to read as follows:

§ 203.255 Insurance of mortgage.

(a) *Endorsement without Direct Endorsement processing.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, the Secretary will endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5, the mortgagee shall submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Secretary, or a HUD conditional commitment (for proposed construction only) or a Department of Veterans Affairs certificate or reasonable value, and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage upon a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporating each of the underwriter certification items which apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the appropriate local government official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with § 200.926d(f) of this chapter;

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgagee certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of this paragraph (b). The certification shall incorporate each of the mortgagee certification items which apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees; and

(12) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine whether:

(1) The mortgage is executed on a form which meets the requirements of the Secretary;

(2) The mortgage maturity meets the requirements of the applicable program;

(3) The stated mortgage amount exceeds the maximum mortgage amounts as most recently published in the **Federal Register**;

(4) All documents required by paragraph (b) of this section are submitted:

(5) All necessary certifications are made in accordance with paragraph (b) of this section

(6) There is any mortgage insurance premium, late charge or interest due to the Secretary; and

(7) The mortgage was in default when submitted for insurance or, if submitted for insurance more than 60 days after closing, whether the mortgage shows an acceptable payment history.

In addition, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any

required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

35. In § 203.258, paragraph (c) introductory text, paragraph (c)(2), paragraph (d) introductory text, and paragraphs (d)(2) and (e) are revised to read as follows:

§ 203.258 Substitute mortgagors.

* * * * *

(c) *Applicability-current mortgages.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor only if the mortgage executed by the original mortgagor was insured:

* * * * *

(2) In accordance with the Direct Endorsement program, where the approved underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after December 15, 1989, but before December 15, 1989, or

* * * * *

(d) *Applicability—earlier mortgages.* If the mortgage was insured:

* * * * *

(2) In accordance with the Direct Endorsement program, where the approved underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after February 5, 1988, but before December 15, 1989, or

* * * * *

(e) *Direct endorsement.* Mortgagees approved for participation in the Direct Endorsement program under § 203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

* * * * *

36. In § 203.415, paragraph (b) is revised to read as follows:

§ 203.415 Delivery of certificate of claim.

* * * * *

(b) If the mortgage was accepted for insurance pursuant to a commitment issued on or after September 2, 1984, or under the Direct Endorsement or Coinsurance programs, no certificate of claim shall be issued.

37. Section 203.441 is revised to read as follows:

§ 203.441 Insurance of loan.

Under compliance with the commitment, or as provided in § 203.255(b) with respects to mortgages processed under the Direct Endorsement program, the Commissioner shall insure the loan evidencing the insurance by the issuance of an insurance certificate which will identify the regulations under which the loan is insured and the date of insurance.

38. Section 203.479 is revised to read as follows:

§ 203.479 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

39. Section 203.499 is revised to read as follows:

§ 203.499 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and shall not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan or the Secretary has issued a firm commitment. In addition, such amendment shall not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement underwriter.

40. In § 203.502, paragraph (a) is revised to read as follows:

§ 203.502 Responsibility for servicing.

(a) After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages, except as provided in § 204.5 of this chapter. The servicer must fully discharge the servicing responsibilities of the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Secretary for its actions as a servicer.

* * * * *

PART 204—COINSURANCE

41. The authority citation for 24 part 204 continues to read as follows:

Authority: 12 U.S.C. 1715b, and 1715z-9; 42 U.S.C. 3535(d).

42. Section 204.1 is revised to read as follows:

§ 204.1 Cross-reference.

All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages under section 203(b) of the National Housing Act apply to mortgages, covering one- to four-family dwellings, to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act except the following sections of this title:

203.1 Underwriting procedures.
203.3 Approval of mortgages for Direct Endorsement.
203.5 Direct Endorsement process.
203.7 Commitment process.
203.18 (c), (d), and (e) Maximum mortgage amounts.
203.43 Eligibility of miscellaneous-type mortgages.
203.43a Eligibility of mortgages covering housing in certain neighborhoods.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegheny Reservation of Seneca Nation of Indians.
203.44 Eligibility of open-end advances.
203.50 Eligibility of rehabilitation loans.

43. In § 204.2, paragraph (a) introductory text, paragraphs (a)(1), (a)(5) and (b)(1) are revised to read as follows:

§ 204.2 Approval of coinsuring mortgagees.

(a) A mortgagee approved under § 202.14 of this chapter and meeting the following special requirements may be

approved as a coinsuring mortgagee under this part:

(1) It shall have a net worth as required by § 202.12(n) of this chapter;

* * * * *

(5) It shall file with the Commissioner similar annual audits within 90 days of the closing of its fiscal year so long as its approval as a coinsuring mortgagee continues;

* * * * *

(b) * * *

(1) Failure to maintain the required net worth;

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

44. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 535(d).

45. In § 206.9, paragraph (b) is revised to read as follows:

§ 206.9 Eligible mortgagees.

(a) * * *

(b) *Hud approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under part 202 of this chapter, except an investing mortgagee approved under § 202.16 of this chapter, is eligible to apply for insurance. A mortgagee approved under § 202.13, § 202.14, § 202.16, or § 202.17 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

46. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713 and 1715b; 42 U.S.C. 3535(d).

47. Section 207.22 is revised to read as follows:

§ 207.22 Qualifications of lenders.

The provisions of §§ 202.11 to 202.14 and §§ 202.16 to 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

48. A new § 207.263 is added to read as follows:

§ 207.263 Responsibility for servicing.

After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

49. The authority citation for 24 CFR part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715e; 42 U.S.C. 3535(d).

50. Section 213.39 is revised to read as follows:

§ 213.39 Qualifications.

The provisions of §§ 202.11 through 202.14 and 202.16 through 202.19 shall apply and govern the eligibility, qualifications and requirements of mortgagees and lenders under this subpart.

51. Section 213.502 is revised to read as follows:

§ 213.502 Qualification of lenders.

The provisions of §§ 202.11 through 202.14 and 202.16 through 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

§§ 213.504 and 213.505 [Removed and Reserved].

52. Sections 213.504 and 213.505 are removed and reserved, and the undesignated centerhead under subpart C, entitled "Application and Commitment," and § 213.503 are revised to read as follows:

Application for Insurance

§ 213.503 Processing for insurance.

Mortgages under this part 213 shall be processed by approved mortgages and insured by the Secretary through the Direct Endorsement procedure at part 203 of this chapter, unless otherwise determined by the Secretary.

53. In § 213.510, paragraph (a) is revised to read as follows:

§ 213.510 Mortgage maturity.

(a) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization.

* * * * *

54. In § 213.752, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 213.752 Substitute mortgagors.

* * * * *

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

55. The authority citation for 24 CFR part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

56. In § 220.104, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 220.104 Cost certification requirements.

A loan for the improvement of a structure which is used, or upon completion of the improvements will be used, as a dwelling for five-to-eleven families shall be subject to the provisions of paragraphs (a) through (c) of this section as follows:

(a) The lender shall submit with the application for insurance an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute upon completion of the improvements a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the approval by the Direct Endorsement underwriter, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $12,000 or adjusted to the lowest $100 multiple where the amount exceeds $12,000.

* * * * *

57. In § 220.105, paragraph (c) is revised to read as follows:

§ 220.105 Use of proceeds.

* * * * *

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used upon completion of the improvements, primarily for residential purposes by not more than eleven families; and

(2) Have been constructed not less than ten years prior to the date of the loan unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct

defects which are not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

58. Section 220.253 is revised by redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 220.253 Substitute mortgagors.

* * * * *

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

* * * * *

59. Section 220.563 is revised to read as follows:

§ 220.563 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 202.11 through 202.14 or § 202.16 of this chapter shall be eligible for insurance of project improvement loans under § 220.550 *et seq.*

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

60. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715*l*; 42 U.S.C. 3535(d).

61. Section 221.30 is revised to read as follows:

§ 221.30 Maturity of mortgage.

The mortgage shall provide for complete amortization over a term of not more than 30 years from the date of the beginning of amortization.

62. Section 221.32 is revised to read as follows:

§ 221.32 Beginning of payments on mortgage.

The mortgage shall provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgage is executed (or the date a construction mortgage is converted to a permanent mortgage, if applicable).

63. In § 221.70, paragraph (a)(2) is revised to read as follows:

§ 221.70 Applicability.

(a) * * *

(2) In accordance with the Direct Endorsement program described in § 203.5 of this chapter, if the approved underwriter of the mortgagee signs the appraisal Report or the Master Appraisal Report for the property on or after September 24, 1990.

* * * * *

64. In § 221.252, paragraph (e) is revised to read as follows:

§ 221.252 Substitute mortgagors.

* * * * *

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 of this chapter may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under the section and need not obtain further specific approval from the Commissioner.

* * * * *

65. Section 221.528 is revised to read as follows:

§ 221.528 Qualification of lenders.

The provisions of §§ 202.11 through 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

66. In § 221.770, the first sentence is revised to read as follows:

§ 221.770 Assignment option.

A mortgagee holding a conditional or firm commitment issued on or before November 30, 1983 (or, in the Direct Endorsement program, a property appraisal report signed by the mortgagee's approved underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. * * *

PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

67. The authority citation for 24 CFR part 222 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715m; 42 U.S.C. 3535(d).

68. In § 222.254, paragraph (e) is revised to read as follows:

§ 222.254 Substitute mortgagors.

* * * * *

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 of this chapter may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section and need not obtain further specific approval from the Commissioner.

* * * * *

PART 226—ARMED SERVICES HOUSING-CIVILIAN EMPLOYEES [SEC. 809]

69. The authority citation for 24 CFR part 226 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1748f, 1748h–1; 42 U.S.C. 3535(d).

70. Section 226.252 is revised by redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e) to read as follows:

§ 226.252 Substitute mortgagors.

* * * * *

(e) *Direct endorsement.* Mortgagees approved for participation in the Direct Endorsement program under § 203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

* * * * *

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

71. The authority citation for 24 CFR part 227 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1748f, 1748h–z; 42 U.S.C. 3535(d).

72. In § 227.1, paragraph (a) is revised to read as follows:

§ 227.1 Cross-reference.

(a) *General.* All of the provisions of §§ 202.11 to 202.14, and §§ 202.16 to 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

73. In § 227.501, paragraph (a) is revised to read as follows:

§ 227.501 Cross-reference.

(a) *General.* All of the provisions of §§ 202.11 to 202.14, and §§ 202.16 to 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

* * * * *

74. Section 227.545 is revised to read as follows:

§ 227.545 Maximum term.

The mortgage shall come due on the first day of a month and shall have a term of not more than 30 years from the date of the beginning of amortization.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

75. The authority citation for 24 CFR part 233 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715x; 42 U.S.C. 3535(d).

§ 233.5 [Amended]

76. Section 233.5 is amended by removing paragraphs (a)(5) and (a)(6).

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

77. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b and 1715y; 42 U.S.C. 3535(d).

78. Section 234.5 is revised to read as follows:

§ 234.5 Qualification of lenders.

The provisions of §§ 202.11 through 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

§§ 234.11 and 234.12 [Removed and Reserved]

79. Sections 234.11 and 234.12 are removed and reserved, and the undesignated center heading under subpart A entitled "Application and Commitment" and § 234.10 are revised to read as follows:

Application for Insurance

§ 234.10 Processing for insurance.

Mortgages under this part 234 shall be processed by approved mortgagees and insured by the Secretary through the Direct Endorsement procedure at Part 203 of this chapter, unless otherwise determined by the Secretary.

80. Section 234.16, paragraph (a) is revised to read as follows:

§ 234.16 Certificate of nondiscrimination by the mortgagor.

* * * * *

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling to any person because of race, color, religion, national origin, familial status (except as provided by law), or handicap.

* * * * *

81. Section 234.17 is amended by adding new paragraphs (c) and (d) and by revising paragraphs (a) and (b) to read as follows:

§ 234.17 Mortgagor and mortgagee requirements for maintaining flood insurance coverage.

(a) If the mortgage is to cover property that:

(1) Is located in an area designated by the Federal Emergency Management Agency (FEMA) as a flood plain area having special flood hazards, or

(2) Is otherwise determined by the Commissioner to be subject to a flood hazard; and if flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property, the mortgagor and mortgagee shall be obligated, by a special condition to be included in the mortgage insurance commitment, to obtain and to maintain NFIP flood insurance coverage on the property during such time as the mortgage is insured.

(b) No mortgage shall be insured which covers property located in an area that has been identified by FEMA as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program, and such insurance is obtained by the mortgagor. Such requirement for flood insurance shall be effective July 1, 1975, or one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards, whichever is later.

(c) The flood insurance shall be maintained during such time as the mortgage is insured in an amount at least equal to either the outstanding balance of the mortgage, less estimated land costs, or the maximum amount of NFIP insurance available with respect to the property, whichever is less.

(d) The maintenance of flood insurance coverage on the project by the condominium association will satisfy the requirements of this section if such coverage protects the interest of the mortgagor in the family unit. For this purpose the interest of the mortgagor is defined as insurance coverage equal to the replacement cost of the project less land costs.

82. In § 234.25, paragraphs (c)(2) and (c)(4) are revised to read as follows:

§ 234.25 Mortgage provisions.

* * * * *

(c) * * *

(2) Have a term of not more than 30 years from the date of the beginning of amortization.

* * * * *

(4) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgage is executed (or the date a construction mortgage is converted to a permanent mortgage, if applicable).

* * * * *

83. In § 234.85, paragraph (a)(2) is revised to read as follows:

§ 234.85 Applicability.

(a) * * *

(2) In accordance with the Direct Endorsement program described in § 203.5 of this chapter, if the approved underwriter of the mortgage signs the Appraisal Report or Master Appraisal Report for the property on or after September 24, 1990.

* * * * *

84. Section 234.249 is revised to read as follows:

§ 234.249 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and shall not adversely affect the interest of a mortgagee on any mortgage or loan to be insured on which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan or the Secretary has issued a firm commitment. In addition, such amendment shall not adversely affect the eligibility of specific property is such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement underwriter.

85. In § 234.256, paragraph (e) is revised to read as follows:

§ 234.256 Substitute mortgagors.

* * * * *

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 may themselves approve an appropriate substitute mortgagor under this section and need not obtain further specific approval from the Commissioner.

* * * * *

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

86. The authority citation for 24 CFR part 237 continues to read as follows:

Authority. 12 U.S.C. 1709, 1715b, 1715z–2; 42 U.S.C. 3535(d).

87. Section 237.5 is revised to read as follows:

§ 237.5 Cross-reference.

To be eligible for insurance under this subpart, a mortgage must meet all of the eligibility requirements for insurance under part 203, subpart A of this chapter; or under part 220, subpart A of this chapter; or under part 221, subpart A of this chapter; or under part 234, subpart A of this chapter, except that in addition to meeting such eligibility requirements, the mortgage must meet comply with the special requirements of this subpart. Mortgages and loans processed under the Direct Endorsement program described in § 203.5, mortgages insured on Hawaiian home lands or Indian land pursuant to section 247 or 248 of the National Housing Act, or mortgages insured under section 203(b) of the Act as modified by section 203(q), are not eligible under this subpart. For restrictions against approving mortgage insurance for a certain category of newly legalized alien, see part 49 of this chapter.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

88. The authority citation for 24 CFR part 240 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–5; 42 U.S.C. 3535(d).

89. In § 240.16, paragraph (b)(4) is revised to read as follows:

§ 240.16 Mortgage provisions.

* * * * *

(b) * * *

(4) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgage is executed (or the date a construction mortgage is converted to a permanent mortgage, if applicable).

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

90. The authority citation for 24 CFR part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 175z–6; 42 U.S.C. 3535(d).

91. Section 241.40 is revised to read as follows:

§ 241.40 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 202.11 through 202.14 or 202.16 of this chapter shall be eligible for insurance of project improvement loans under this subpart.

92. Section 241.1040 is revised to read as follows:

§ 241.1040 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 202.11 through 202.14 or 202.16 of this chapter are eligible for insurance of equity loans under this subpart.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

93. The authority citation for 24 CFR part 242 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

94. Section 242.25 is revised to read as follows:

§ 242.25 Eligible mortgagees.

The provisions of §§ 202.11 through 202.14 and §§ 202.16 through 202.19 shall govern the eligibility, qualifications, and requirements of mortgages under this subpart.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

95. The authority citation for 24 CFR part 244 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

96. Section 244.25 is revised to read as follows:

§ 244.25 Qualifications for lenders.

The provisions of §§ 202.11 through 202.14 and §§ 202.16 through 202.19 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Dated: November 13, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–29524 Filed 12–8–92; 8:45 am]

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Wednesday
December 9, 1992

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 310, 341, and 369

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antihistamine Drug Products; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 310, 341, and 369

[Docket No. 76N-052H]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antihistamine Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antihistamine drug products (drug products used for the relief of the symptoms of hay fever and upper respiratory allergies (allergic rhinitis)) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on antihistamine drug products that have come to the agency's attention. Also, this final rule amends the regulation that lists nonmonograph active ingredients by adding those OTC antihistamine ingredients that have been found to be not generally recognized as safe and effective or are misbranded and were not previously listed in the regulation. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: December 9, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), 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 cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of tentative final monographs for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, was issued in the following segments: anticholinergics and expectorants, bronchodilators, antitussives, nasal decongestants, antihistamines, and combinations. The fifth segment, the tentative final monograph for OTC antihistamine drug products, was published in the **Federal Register** of January 15, 1985 (50 FR 2200). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986.

In this tentative final monograph, the agency acknowledged a need to evaluate new data and information concerning doxylamine succinate and birth defects (50 FR 2200 at 2202). This information arose after the Cough-Cold Panel recommended that doxylamine succinate be generally recognized as safe and effective as an OTC antihistamine (41 FR 38312 at 38419). In the **Federal Register** of August 24, 1987 (52 FR 31892), FDA published a notice of proposed rulemaking on OTC antihistamine drug products that amended the tentative final monograph that was published on January 15, 1985 to include chlorcyclizine hydrochloride and doxylamine succinate as Category I OTC antihistamine active ingredients and to revise the proposed dosage for triprolidine hydrochloride. Interested persons were invited to file by October 23, 1987, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 22, 1987. New data could have been submitted until August 24, 1988, and comments on the new data until October 25, 1988. No comments were received concerning chlorcyclizine hydrochloride or triprolidine hydrochloride. Therefore, final agency action on chlorcyclizine hydrochloride and triprolidine hydrochloride occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC antihistamine drug products.

With regard to doxylamine succinate, the agency received a technical report concerning a 2-year carcinogenicity and chronic toxicity study of doxylamine succinate in Fischer 344 rats and B6C3F1 mice that was conducted by the National Center for Toxicological Research (NCTR) under the auspices of the National Toxicology Program (NTP) (Ref. 1). The study was prompted by the National Cancer Institute's finding that methapyrilene, a similar antihistamine, is a potent liver carcinogen in the rat. The data on methapyrilene are on file in the Dockets Management Branch (address above) under Docket No. 75N-0244 and have been published (Ref. 2).

In the NCTR study (Ref. 1), doxylamine succinate was administered, ad libitum, as an admixture in the feed to male and female rats at dose levels of 0, 500, 1,000, or 2,000 parts per million (ppm) for 2 years. Mice of both sexes received food containing dose levels of 0, 190, 375, or 750 ppm. Each group contained 48 weanling animals per sex; the animals were scheduled for sacrifice at the end of 104 weeks. An additional group of animals (9 rats and 12 mice per sex) in each dose group was sacrificed at the end of 65 weeks. There were no significant treatment-related differences in survival in either rats or mice. In rats, the highest doxylamine succinate dose group had final body weights that were 22.8 percent (females) and 8.4 percent (males) lower than controls. A number of nonneoplastic lesions was observed in rats, including fatty change, degeneration, and hyperplasia of the liver and increased cytoplasmic alteration in the salivary glands. In mice, there was evidence of hepatotoxicity including hypertrophy, clear and mixed cell foci, and, in females, fatty change. There also was a treatment-related increase in "atypical" hepatocytes in male mice. Both male and female mice had a dose-related increase in thyroid follicular cell hyperplasia. There was a significant positive trend for increased incidence with increasing dose for both hepatocellular adenomas and carcinomas in male rats. When the

incidence of adenomas and carcinomas were combined, the trend test was positive ($p < 0.01$) and the incidence in the highest dose group was significantly ($p < 0.05$) increased over that of controls. No treatment-related increase in neoplasms was found in female rats. Although not statistically significant, one rat in each of the high dose groups of male and female rats was found to have a pineal gland tumor. Given the extreme rarity of this neoplasm in rats, these tumors may be reason for concern despite the lack of a statistically significant increase. In mice, doxylamine succinate administration produced an increased incidence of hepatocellular adenoma in both males and females. Also, both male and female mice had a treatment-related increase in follicular cell adenoma of the thyroid gland.

On June 13 and 14, 1991, the agency's Pulmonary-Allergy Drugs Advisory Committee met to discuss the results of the NCTR study. By a vote of five to one, the Committee concluded that the human carcinogenic potential of doxylamine is not likely. The Committee also recommended (again by a vote of five to one) that doxylamine remain OTC but that there be some warning to the consumer that these data exist (Ref. 3). The agency is currently evaluating the relevance of the study findings to humans and the advisory committee's recommendations. The agency will publish its final decision on doxylamine in OTC antihistamine drug products in a future issue of the **Federal Register**. At this time, drug products containing doxylamine succinate as an OTC antihistamine can remain in the marketplace with the labeling proposed for this ingredient in the tentative final monograph (52 FR 31892 at 31913 and 31914).

The agency's final rule, in the form of a final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products is also being published in segments. Because the agency has completed its evaluation of all OTC antihistamine active ingredients other than doxylamine succinate, it is proceeding at this time with its final rule for products containing these ingredients. Final agency action on all OTC antihistamine drug products, except those containing doxylamine, occurs with the publication of this final monograph, which establishes §§ 341.3(g), 341.12, 341.72, and 341.90(e) through (q) for OTC antihistamine drug products in 21 CFR part 341. Combination drug products containing antihistamine ingredients are addressed in the tentative final monograph on OTC cough-cold combination drug products, which was published in the **Federal Register** of August 12, 1988 (53 FR 30522). A final rule on combination drug products containing antihistamine ingredients will be published in a future issue of the **Federal Register**.

In the tentative final monograph published in the **Federal Register** of January 15, 1985, the agency discussed data submitted in support of the use of chlorpheniramine maleate in treating the symptoms of the common cold and, based on those data, proposed an indication for the temporary relief of runny nose and sneezing associated with the common cold in § 341.72(b) of the tentative final monograph (50 FR 2200 at 2203, 2204, and 2216). Recently, the agency has been evaluating applications requesting prescription-to-OTC switch for drug products containing antihistamines. Some have included labeling for use in the common cold without direct support from clinical studies. The requested claim is based on similarity of pharmacologic action to the other antihistamines included in the tentative final monograph for OTC antihistamine drug products, in which the agency proposed common cold claims based on clinical studies for chlorpheniramine maleate and the similarity of pharmacologic action of all the other monograph antihistamines (50 FR 2216). However, the agency has concerns whether the pharmacologic effects of older Category I ingredients that it considered previously as providing relief of common cold symptoms are characteristic of newer antihistamine drugs. The agency is presently evaluating whether data on chlorpheniramine maleate for this use should be extrapolated to other antihistamines included in this final monograph or any other antihistamines that may be switched from prescription to OTC status. Also, the agency is aware that there is controversy within the scientific community as to whether antihistamines are effective in treating symptoms of the common cold. Before completing this aspect of the rulemaking, the agency wishes to evaluate more recent clinical studies as well as the older data concerning the effectiveness of antihistamines in treating symptoms of the common cold. The agency will discuss these matters in a future issue of the **Federal Register**. Thus, the agency is deferring, at this time, a final conclusion concerning the use of antihistamines for the relief of sneezing and runny nose associated with the common cold, but is publishing its conclusions concerning the use of antihistamines for allergic rhinitis.

The OTC drug procedural regulations (§ 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC antihistamine drug products (50 FR 2200), the agency advised that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after December 9, 1993, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule and amended proposed rule on OTC antihistamine drug products, 10 drug manufacturers, 1 drug manufacturers' association, 1 health care professional, 1 consumer group, and 8 consumers submitted comments. Copies of the comments are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since

publication of the proposed rule and amended proposed rule is also on display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

REFERENCES

(1) Department of Health and Human Services, NCTR, "Technical Report for Experiments 406 and 407; Chronic Study of Doxylamine in Fischer 344 Rats and B6C3F1 Mice," 1991, included in OTC Vol. No. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Lijinsky, W., M. D. Reuber, and B. N. Blackwell, "Liver Tumors Induced in Rats by Chronic Oral Administration of the Common Antihistamine Methapyrilene Hydrochloride," *Science*, 209:817–819, 1980.

(3) Transcript of the June 13–14, 1991 meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, Vol. II, pp. 172–182, in OTC Vol. No. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

I. THE AGENCY'S CONCLUSIONS ON THE COMMENTS

A. General Comments on OTC Antihistamine Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464 at 9471 to 9472); in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260); and in paragraph 2 of the preamble to the tentative final monograph for OTC cough-cold combination drug products, published in the **Federal Register** of August 12, 1988 (53 FR 30522 at 30524). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by informal rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. One comment contended that antihistamines are not effective in alleviating the symptoms of runny nose or sneezing associated with the common cold and thus objected to the agency's decision that chlorpheniramine is effective for this use and that the data from the chlorpheniramine studies allow Category I status for this claim to be extended to all antihistamines. The comment contended that the studies upon which the agency based its decision (Refs. 1 and 2) are inadequate "to prove chlorpheniramine effective for treating colds" because the studies do not meet the standards of the Panel.

The comment described what it considered to be several major design flaws in the two studies. The comment maintained that neither study carefully excludes subjects with hay fever or other allergies from its study group and that the criteria (i.e., "cold symptoms for at least 24 hours, but not longer than 48 hours") for diagnosis of colds are weak. The comment stated that because the symptoms of hay fever mimic those of a cold and because antihistamines are effective in treating hay fever, careful exclusion of subjects with hay fever is essential in a study testing the effectiveness of antihistamines in treating colds. The comment asserted that the only effort made to exclude subjects with allergies was to ask whether they had known allergies. The comment stated that although the studies were conducted in the winter, in several cases they began as early as November or ended as late as May. The comment argued that both November and May are within the hay fever and allergy seasons. The comment suggested that the studies should have included only victims of known cold outbreaks or subjects with colds produced by virus challenge, or that, at the minimum, nasal eosinophil smears should have been done to exclude active allergies. The comment asserted that even a small number of subjects with hay fever could have skewed the study to benefit chlorpheniramine, "especially in view of the minimal effect that chlorpheniramine had."

The comment also alleged that one of the submissions to the agency (Ref. 1) excluded from its tables the results of one of its three investigators because these results were "inconsistent with the results of the other two studies." The comment maintained that if these studies are included, subjects taking chlorpheniramine are not significantly better off in most categories (e.g., patients' overall evaluation, total objective score, and physicians' global evaluation) than subjects who took the placebo.

The comment added that the other study submitted to the agency (Ref. 2) only demonstrates minimal improvement in subjects taking chlorpheniramine because for each symptom (i.e., sneezing, runny nose, or nose blowing) the drug-treated subjects felt significantly better than those taking placebo at only one or two of the six measurement times.

Additionally, the comment asserted that one could not know how well subjects were randomized in these studies and that the bitter taste of chlorpheniramine could have confounded the results by foiling the double-blind design.

The comment cited two published reports that purported to demonstrate the ineffectiveness of antihistamines in "treating the common cold." One report reviewed 35 published studies of antihistamine use in colds and found that only 2 of the studies were well designed (Ref. 3). The comment noted that neither of these two well-designed studies supported the use of antihistamines to treat colds. The other published report cited by the comment involved a study of the effectiveness of two antihistamines in preventing or improving colds induced by inoculating volunteers with a cold virus. The comment concluded that the drugs were not beneficial because the severity of the colds and the duration of the symptoms were the same in both the drug-treated and the placebo-treated subjects (Ref. 4).

Noting that the overwhelming majority of cold preparations containing an antihistamine also contain a nasal decongestant, the comment suggested that the major flaw in both studies (Refs. 1 and 2) is that neither study demonstrates that the antihistamine adds to the effectiveness of the decongestant in treating colds. The comment maintained that although antihistamines alone may or may not have a small effect in decreasing sneezing and runny nose, this effect is likely to be overshadowed, if not lost, when an antihistamine is combined with a nasal decongestant. The comment added that because the two studies do not address the question of whether or not antihistamines add any benefit when they are used in combination "cold" drugs, the studies do not support the use of antihistamines as they are currently used in cold preparations on the United States OTC drug market. The comment also pointed out that under FDA's prescription drug review one antihistamine-nasal decongestant combination containing triprolidine hydrochloride and

pseudoephedrine hydrochloride was unable to be proven effective for the treatment of colds as a prescription drug, but that it is currently being promoted OTC almost exclusively for use in colds.

As discussed previously, the agency is deferring final action on this issue at this time.

References

(1) Comment No. SUP004, Docket No. 76N-0052, Dockets Management Branch.

(2) Comment No. SUP005, Docket No. 76N-0052, Dockets Management Branch.

(3) West, S., et al., "A Review of Antihistamines and the Common Cold," *Pediatrics*, 56:100-107, 1975.

(4) Feller, A. E., et al., "The Failure of Antihistaminic Drugs to Prevent or Cure the Common Cold and Undifferentiated Respiratory Diseases," *The New England Journal of Medicine*, 242:737-744, 1950.

B. Comments on Switching Prescription Antihistamine Active Ingredients to OTC Status

3. One comment commended the agency for its initiative in proposing additional antihistamine active ingredients (dexchlorpheniramine maleate, dexbrompheniramine maleate, diphenhydramine hydrochloride, and triprolidine hydrochloride) for OTC status. The comment pointed out that dexchlorpheniramine maleate and dexbrompheniramine maleate are the dextrorotary isomers of drugs that have long been generally recognized as safe and effective. Adding that both ingredients have a long history of safe and effective use as prescription antihistamines, the comment noted that dexbrompheniramine maleate recently was switched to OTC use through the new drug application (NDA) process. The comment also stated that diphenhydramine hydrochloride and triprolidine hydrochloride have been safely and effectively used for years both as prescription and OTC drugs. The comment concluded that the inclusion of these four ingredients in proposed § 341.12 is a logical, correct, and justifiable action. On the other hand, another comment maintained that "more and stronger antihistamines" should not be available without requiring a physician's prescription.

In its report (41 FR 38312 at 38379 to 38396), the Panel concluded that several antihistamines, including diphenhydramine hydrochloride, that had previously been available only by prescription could be safely marketed OTC with appropriate labeling. Although the agency originally dissented from the Panel's Category I classification of diphenhydramine hydrochloride (41 FR 38313), in the tentative final monograph for OTC antihistamine drug products, the agency concluded that diphenhydramine hydrochloride could be safely marketed OTC (50 FR 2200 at 2205). The agency also proposed that the antihistamines dexbrompheniramine hydrochloride, dexchlorpheniramine hydrochloride, and triprolidine hydrochloride, which had previously been available by prescription or for OTC marketing under NDA's, be generally recognized as safe and effective (50 FR 2205 and 2212 to 2214).

When considering whether or not a certain ingredient should be available OTC, the agency's primary concern is an assessment of the overall margin of safety. Factors included in the agency's determination of the margin of safety include toxicity, potential for harmful effects and collateral measures necessary for safe use, abuse and misuse potential, and the benefit-to-risk ratio. The agency has carefully evaluated the risk inherent in the OTC availability of antihistamines, including some ingredients that had been marketed OTC under approved NDA's for many years, and others that had been available only as prescription drugs. The agency concludes that, with appropriate labeling, the ingredients listed in § 341.12 of this final monograph are safe for OTC use within the dosage limits established in the monograph. The second comment did not submit any data demonstrating that these ingredients are not safe for OTC use, or that a physician's prescription is needed for their proper use. Based on adequate evidence establishing that these ingredients are generally recognized as safe and effective for OTC use as antihistamines, the agency is including dexchlorpheniramine maleate, dexbrompheniramine maleate, diphenhydramine hydrochloride, and triprolidine hydrochloride in § 341.12 of this final monograph.

4. One comment noted that the tentative final monograph for OTC antihistamine drug products lists diphenhydramine hydrochloride as Category I and suggested that the same status be accorded diphenhydramine monocitrate (now named diphenhydramine citrate). The comment pointed out that the agency concluded that the citrate salt could be considered identical to the hydrochloride salt in a notice of enforcement policy relating to diphenhydramine as a nighttime sleep-aid, which was published in the **Federal Register** on April 23, 1982 (47 FR 17740). Hence, the comment concluded that the diphenhydramine citrate dose equivalent to the diphenhydramine hydrochloride dose should be classified Category I as an antihistamine.

A second comment (which was submitted to the agency prior to the publication of the tentative final monograph for OTC antihistamine drug products, but after the administrative record had closed), in the form of a citizen petition, also recommended that diphenhydramine be included in the antihistamine monograph as a Category I OTC antihistamine drug as both the hydrochloride and the citrate salts. In support of this recommendation, the petition stated that the Cough-Cold Panel had recommended that diphenhydramine hydrochloride be classified in Category I for OTC use as an antihistamine in suppressing the symptoms of allergic rhinitis at adult dosages of 25 to 50 mg every 4 to 6 hours, not to exceed 300 mg daily, and at children's (6 years and over) dosages of 12.5 to 25 mg every 4 to 6 hours, not to exceed 150 mg daily (41 FR 38312 at 38419). The petition presented a number of reasons why diphenhydramine could be considered safe and effective, as the hydrochloride salt and as the citrate salt, for use as an OTC antihistamine. These included: (1) The Panel's Category I recommendation for diphenhydramine hydrochloride; (2) diphenhydramine is a member of the ethanolamine class of antihistamines with clinical use dating to 1946; (3) the ingredient does not pose a serious safety question beyond its sedation qualities; and (4) proper labeling will minimize problems. A second citizen petition also requested that diphenhydramine citrate be included in the OTC antihistamine final monograph. The petition referenced agency statements in the rulemaking for OTC nighttime sleep-aid drug products (47 FR 17740 at 17741 and 54 FR 6814 at 6824) that the citrate salt could be considered identical to the hydrochloride salt.

The agency agrees with the first comment and the citizen petitions that diphenhydramine, in both the hydrochloride and the citrate salt forms, be included in the final monograph for OTC antihistamine drug products. The agency proposed in the antihistamine tentative final monograph (50 FR 2200 at 2204) that diphenhydramine hydrochloride is safe and effective for OTC use as an antihistamine and proposed that diphenhydramine hydrochloride be Category I at an adult dosage of 25 to 50 mg every 4 to 6 hours for use in OTC antihistamine drug products (50 FR 2204). The agency confirms that proposal in this final monograph.

With respect to diphenhydramine citrate for use as an OTC nighttime

sleep-aid ingredient, the agency stated in the final rule for OTC nighttime sleep-aid drug products (February 14, 1989; 54 FR 6814 at 6823 and 6824) that diphenhydramine hydrochloride and diphenhydramine citrate are safe and effective. The agency concluded that the citrate salt could be considered identical to the hydrochloride salt, because the citrate salt is rapidly converted in the stomach to the hydrochloride salt. The agency also concluded that a dose of 76 mg diphenhydramine citrate is necessary to supply a diphenhydramine content equivalent to 50 mg diphenhydramine hydrochloride.

Therefore, the agency is including diphenhydramine citrate as an active ingredient in the antihistamine final monograph with the following directions: Adults and children 12 years of age and over: oral dosage is 38 to 76 milligrams every 4 to 6 hours, not to exceed 456 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 to 38 milligrams every 4 to 6 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The agency will also include directions for diphenhydramine citrate in the antihistamine final monograph under professional labeling as follows: Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 to 6 hours, not to exceed 57 milligrams in 24 hours.

5. A health care professional had no real reservations about diphenhydramine hydrochloride being marketed OTC for treating allergic symptoms, but reported that an adult patient had committed suicide with an overdose of a drug product containing diphenhydramine hydrochloride.

The Panel, in its evaluation of whether a drug product is safe and effective for OTC use, considered the potential for misuse and abuse (41 FR 38312 at 38385) and did not find any data on diphenhydramine hydrochloride to warrant such concerns. Likewise, the agency at this time is not aware of any data to demonstrate that the misuse of diphenhydramine is a widespread problem. The agency is concerned about the possibility of any adverse effects resulting from the use of OTC drug products, but it also recognizes that a number of drugs in the marketplace (both OTC and prescription) can be and are knowingly misused by some individuals. However, the agency does not find that potential misuse by certain individuals should deprive the majority of the population from having OTC access to drugs that can be used safely and effectively when labeled directions and warnings are followed. The agency has determined that the labeling and warnings required by this final monograph for OTC antihistamine drug products should provide for the safe and effective use of diphenhydramine hydrochloride when used at the monograph dosages. The agency concludes that diphenhydramine hydrochloride should be available as an OTC antihistamine because it is safe and effective when used as instructed in the labeling.

6. One comment contended that the agency's reasons for placing promethazine hydrochloride in Category III as a single ingredient in the tentative final monograph for OTC antihistamine drug products were in error. The comment stated that the agency's objections against OTC use of this ingredient are exclusively limited to the separate indication of temporary relief of runny nose, sneezing, itching of the nose or throat, and itchy, watery eyes due to hay fever or other upper respiratory allergies or allergic rhinitis. The comment urged the agency to recognize promethazine hydrochloride as a single entity as safe and effective for OTC use, at least for the indication pertaining to the temporary relief of runny nose and sneezing associated with the common cold. The comment argued that promethazine has been generally recognized as effective for a long time. The comment also alleged that the agency's rejection of general recognition of promethazine is based solely on the theoretical safety concern that use of this drug over an extended period of time to relieve symptoms of allergic rhinitis might result in tardive dyskinesia, a serious central nervous system syndrome that may persist indefinitely after discontinuation of the drug. The comment asserted that this safety concern does not exist because no case of tardive dyskinesia has ever been associated with promethazine use, and there has been a total lack of any adverse reports through the 34 years of continuous marketing of this drug in the United States. Further, although promethazine is structurally related to the other phenothiazine drugs which have been linked to causing tardive dyskinesia, the differences in chemical structures and pharmacological effects between promethazine and other phenothiazine drugs substantially lessen the possibility that promethazine could cause the range of side effects associated with other phenothiazine drugs. The comment concluded that the self-limiting use of promethazine to relieve symptoms of the common cold (7 to 14 days) negates the agency's safety concern that extended use may cause tardive dyskinesia.

The Cough-Cold Panel classified promethazine hydrochloride in Category I as an OTC antihistamine (42 FR 38312 at 38390 to 38391). The agency dissented from the Panel's Category I classification of promethazine hydrochloride in the preamble to the Panel's report (41 FR 38313) based on the degree of drowsiness produced by promethazine hydrochloride and the possible adverse effects in children, such as extrapyramidal disturbances.

In the tentative final monograph for OTC antihistamine drug products (50 FR 2200 at 2206 to 2208), the agency stated that the possibility of choreoathetosis (a condition marked by jerky, involuntary movements) occurring with OTC oral doses of promethazine is unlikely and that there was no evidence to indicate that extrapyramidal side effects were more likely to occur with children. However, the agency placed promethazine hydrochloride in Category III as a single ingredient because of concerns that the rare, but serious adverse reaction of the central nervous system known as tardive dyskinesia might occur if promethazine is used on a long-term basis (50 FR 2200 at 2206 to 2208). The agency also stated that promethazine hydrochloride has not been used extensively as a single ingredient for antihistamine/allergic rhinitis/antiallergy use on a long-term basis. Data submitted to the agency were not sufficient to alleviate these concerns, and promethazine hydrochloride as a single ingredient was placed in Category III in the OTC antihistamine tentative final monograph.

In the tentative final monograph for OTC cough-cold combination drug products published in the **Federal Register** of August 12, 1988 (53 FR 30522 at 30558 to 30559 and 30563), the agency noted that promethazine has been widely used as a prescription drug, primarily in combination with other active ingredients for acute cough-cold symptoms on a short-term basis. At that time, the data and information indicated that such short-term use of promethazine hydrochloride in these products was safe and that under conditions of short-term use for the relief of cold symptoms, the possibility of tardive dyskinesia occurring was no longer a concern. Therefore, the agency proposed that promethazine hydrochloride in combination with other cough-cold and/or analgesic-antipyretic ingredients be Category I as an OTC antihistamine ingredient in combination drug products for short-term (7-day) use in relieving the

symptoms of runny nose and sneezing due to the common cold (53 FR 30563).

In response to the agency's decision to allow the OTC marketing of promethazine hydrochloride-containing cough-cold combination drug products for short-term (7-day) use for relief of the symptoms of the common cold, the Public Citizen Health Research Group (HRG) and the University of Maryland SIDS Institute (Ref. 1) submitted a citizen petition objecting to the OTC marketing of promethazine-containing cough-cold combination drug products. A number of physicians (Refs. 2 through 9) also objected to OTC status. The major concern that the petition and the physicians raised was that there is a possibility that the use of promethazine-containing drug products in children under 2 years of age may be associated with the occurrence of sudden infant death syndrome (SIDS) and that OTC availability of these drug products could "dramatically increase" "overuse" of these drug products in children in this age group. The petition also raised concerns about possible adverse neurological reactions associated with these drug products and about the use of prescription promethazine-containing drug products in children under age 2, in pregnant or nursing women, and in the elderly.

One manufacturer of promethazine-containing combination drug products submitted data and information to the OTC cough-cold combination drug products rulemaking in response to the concerns raised in the citizen petition, and has objected to the request of the petition (Ref. 10). In addition, the agency has received other information concerning OTC use of drug products containing promethazine hydrochloride in Canada (Ref. 11).

In response to the citizen petition and the manufacturer's submission, the agency scheduled a meeting of the Pulmonary-Allergy Drugs Advisory Committee on July 31, 1989, to discuss the advisability of switching the marketing of cough-cold combination drug products containing promethazine hydrochloride from prescription status to OTC status. Presentations were made by FDA staff and consultants, by representatives of Public Citizen Health Research Group, representatives of a major manufacturer of promethazine hydrochloride drug products, and by other interested persons. The agency has placed the transcripts of that meeting in the docket for the rulemaking for OTC cough-cold combination drug products (Ref. 12). Minutes of that meeting also will be included in that docket when available.

Presentations by FDA staff (Ref. 12) noted that adverse reaction reports from FDA's Annual Adverse Reaction Summaries since 1969 may not be adequate to establish incidence rates because of under reporting of reactions and the lack of a known number of patients receiving the product. It was also noted that because promethazine has been in use since 1951 and the agency did not begin computerizing its data base until 1969, that reporting of adverse reactions for this drug by that time would be at a minimal level because much was already known in the medical community about this drug's adverse reactions, which may cause a loss of interest in reporting reactions.

One case discussed involved a 27-year-old pregnant woman who was prescribed promethazine hydrochloride 25-mg suppositories, initially every 24 hours for 2 days and subsequently twice a day as needed, for persistent morning nausea and vomiting during her 12th week of pregnancy. After 3 days of use, she developed acute dystonic reactions that caused involuntary abnormal posturings of the neck, trunk, and left arm which lasted for about a year and a half. This case was considered unusual because promethazine was used for a very short time, i.e., 3 days, rather than on a long-term basis. Further, it was noted that although the treating physician initially diagnosed the condition as an acute dystonic reaction to promethazine, the long-term persistence of the condition (one and one-half years) qualified the diagnosis of the condition to be defined as both tardive dystonia and acute dystonia.

Manufacturer representatives in their presentations concluded that there was no real evidence of tardive dyskinesia (a condition primarily characterized by involuntary movement of the facial, buccal, oral, and cervical (neck) musculature (Ref. 13)) associated with promethazine use and that the case of the pregnant woman who developed dystonia (a condition that involves involuntary muscle clonic contortions characterized by abnormal sustained posturing of the neck, trunk, and extremities (Ref. 13)) after 3 days of therapy could have been idiosyncratic, and the condition may have been a movement disorder of pregnancy. The representatives stated further that the only reports of tardive dyskinesia with the use of promethazine occurred with patients using multiple neuroleptic drugs and occurred only after long-term use of phenothiazines. Therefore, short-term use would eliminate any risk of the occurrence of tardive dyskinesia.

After hearing the presentations, the Advisory Committee members voted on a number of the issues presented. In response to the issue concerning the relationship between the use of promethazine-containing drug products and SIDS and/or sleep apnea, one committee member voted that no relationship exists, while the other seven members voted that there is a possible relationship. In response to the issue of whether there is a reason for concern about the use in the elderly of the proposed adult oral dosage of promethazine hydrochloride (6.25 mg every 4 to 6 hours, not to exceed 37.5 mg in 24 hours) on a short-term (7-day) basis, four committee members voted yes, and four members voted no. With respect to the potential neurologic toxicities at the proposed OTC dosage, none of the committee members felt there was a definite concern, but all voted that there are possible concerns. In response to the question (based on the data presented) concerning whether promethazine hydrochloride at proposed OTC doses with specific labeling requirements for short-term (7-day) use should be marketed OTC for relief of the symptoms of the common cold, the Committee recommended to FDA by a vote of seven to one that these drug products not be marketed OTC at this time.

In a notice in the **Federal Register** of September 5, 1989 (54 FR 36762), FDA concluded that it should accept the Advisory Committee's recommendations and announced that promethazine-containing combination drug products for use in treating the symptoms of the common cold may not be marketed OTC at this time. In that policy statement, the agency stated that before making a final decision concerning OTC status for these products and before responding to the citizen petition, that it intended to fully and thoroughly evaluate data and information submitted to date, data presented at the July 31, 1989 advisory committee meeting, and other data and information that may be pertinent. Additional comments and safety data have been submitted by a manufacturer of promethazine-containing drug products (Ref. 14). The submissions respond to issues raised at the July 31, 1989 advisory committee meeting and requests that combination cough-cold drug products containing promethazine hydrochloride be allowed to be marketed OTC.

Therefore, at the present time, the marketing status of promethazine-containing cough-cold drug products remains prescription only. After all the data and information have been reviewed and evaluated, the agency will publish its decision regarding the OTC

marketing status of combination drug products containing promethazine hydrochloride in a future issue of the **Federal Register**.

Irrespective of that evaluation, the agency continues to believe that promethazine as a single ingredient has not been used extensively either to treat the symptoms of allergic rhinitis or the common cold and that unresolved questions remain concerning a causal role in tardive dyskinesia. In addition, presentations at the July 1989 advisory committee meeting regarding promethazine association with both acute and tardive dystonia and tardive dyskinesia reinforce the agency's concern that these conditions may occur with long-term use of promethazine hydrochloride at OTC dosages. Therefore, promethazine hydrochloride as a single ingredient is not being included in this final monograph. If, at a later date, promethazine is considered a monograph condition for use in OTC cough-cold combination drug products, the agency will reconsider its potential OTC use as a single ingredient antihistamine for the temporary relief of runny nose and sneezing associated with the common cold. This will be done in a future **Federal Register** notice in which the agency discusses the use of antihistamines for relief of the symptoms of the common cold or discusses the use of cough-cold combination drug products.

References

(1) Comment No. CP, Docket No. 76N–052G, Dockets Management Branch.
(2) Comment No. C00205, Docket No. 76N–052G, Dockets Management Branch.
(3) Comment No. C00206, Docket No. 76N–052G, Dockets Management Branch.
(4) Comment No. C00207, Docket No. 76N–052G, Dockets Management Branch.
(5) Comment No. C00208, Docket No. 76N–052G, Dockets Management Branch.
(6) Comment No. C00209, Docket No. 76N–052G, Dockets Management Branch.
(7) Comment No. C00212, Docket No. 76N–052G, Dockets Management Branch.
(8) Comment No. C00214, Docket No. 76N–052G, Dockets Management Branch.
(9) Comment No. C00220, Docket No. 76N–052G, Dockets Management Branch.
(10) Comments No. RC0001 and RC0002, Docket No. 76N–052G, Dockets Management Branch.
(11) Comments No. LET 088 and LET089, Docket No. 76N–052G, Dockets Management Branch.
(12) Transcripts of the July 31, 1989 meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, coded TR1, Docket No. 76N–052G, Dockets Management Branch.
(13) "Dorland's Illustrated Medical Dictionary," 27th Ed., W. B. Saunders Company, Philadelphia, 1988, s.v. "dystonia" and "dyskinesia."
(14) Comments No. C00223, C00224, and C00225, Docket No. 76N–052G, Dockets Management Branch.

7. One comment requested that tripelennamine hydrochloride be switched from prescription to OTC status, contending that this drug is nonaddictive and has no more harmful side effects than other "deregulated" (OTC) drugs. Noting that a number of antihistamines, including tripelennamine hydrochloride, have a mild sedative effect, the comment stated that the side effects from some OTC drugs (such as alcohol, aspirin, acetaminophen, and dimenhydrinate hydrochloride) cause more harm to the abuser than tripelennamine hydrochloride. The comment added that the benefits from the use of tripelennamine hydrochloride outweigh any potential misuse or abuse of the drug. The comment mentioned that a number of common household substances from alcohol to household cleaners can be abused or misused, but this potential for abuse and misuse does not curtail the public's beneficial uses of these items. The comment added that tripelennamine hydrochloride is marketed as an OTC drug product in Canada and there do not appear to be any unfavorable reports in the current literature. The comment pointed out that because antihistamines are often used for allergies for extensive periods of time, the cost factor to the consumer would be greatly reduced if tripelennamine hydrochloride was marketed OTC.

Because no data concerning tripelennamine hydrochloride were submitted to the Panel, it did not review this ingredient or make any recommendations on the safety or effectiveness of this drug for use as an OTC antihistamine. Although the comment presented some good reasons to support OTC status for this drug, unfortunately it did not provide any data concerning the safety and effectiveness of tripelennamine hydrochloride for OTC use as an antihistamine. Therefore, the agency is not including tripelennamine hydrochloride in this final monograph.

However, if appropriate safety and effectiveness data are submitted in accordance with the requirements of 21 CFR 330.10(a)(4), the agency will consider OTC status for this drug and a possible future amendment of this final monograph.

C. Comments on Specific OTC Antihistamine Active Ingredients

8. One comment requested that brompheniramine maleate be removed from OTC use based on information in the "Handbook for Prescribing Medication During Pregnancy" (Ref. 1) that cited this ingredient as the only antihistamine associated with increased incidence of birth defects.

The agency believes that the statement that the comment refers to was cited in the above reference as "A large-scale study of drugs that could possibly have a teratogenic effect * * * included chlorpheniramine, pheniramine, and brompheniramine. Of these, only with brompheniramine was there a statistically significant increased risk of teratogenicity." Based on a review of the references cited in the "Handbook for Prescribing Medication During Pregnancy," the agency believes that the large-scale study referenced was a study by Heinonen, Slone, and Shapiro (Ref. 2). The agency has reviewed this study and concludes that a causal association between the use of brompheniramine maleate during pregnancy and the occurrence of birth defects has not been established.

The Heinonen, Slone, and Shapiro study (Ref. 2) is a retrospective study of 50,282 mother-child pairs that included 3,248 malformed children and that considered the relationships between the occurrence of birth defects during the first 4 months of pregnancy and the exposure to antinauseant, antihistamine, and phenothiazine drug products. The agency notes that some of the exposure times reported in this study may not be precise. In this study, the relative risks for occurrence of malformations are presented as crude values, values standardized for hospital variability, and values standardized for the mother's ethnic group and for survival of the child.

In one analysis, the investigators considered all 3,248 malformed children in relation to exposure to the entire group of antinauseants, antihistamines, and phenothiazines in the first 4 lunar months of pregnancy. Out of 65 mother-child pairs with exposure to brompheniramine, they found 10 children with malformations. Based on these data, the investigators stated that brompheniramine was the only drug that had an estimated relative risk that was statistically significant at the 0.05 level. The investigators added that this was the only drug for which the relative risk was greater than 1.5. However, when the investigators analyzed the data confined to the 2,277 children who had malformations which were uniformly distributed across the hospitals studied, they found a hospital-standardized relative risk of 1.98 (6 malformed infants in 65 exposed mother-child pairs) for brompheniramine. The agency believes

that, if the small sample size is taken into consideration and an adjustment were made to account for the large number of associations tested (i.e., analysis of multiple drug categories and multiple types of birth defects) involved in the study, these standardized relative-risk findings would not be considered statistically significant based on the increased probability that the findings in this study may have occurred by chance.

The data presented by Heinonen, Slone, and Shapiro are from the Collaborative Perinatal Project of the National Institute of Neurological and Communicative Disorders and Stroke. The agency obtained a printout of the Collaborative Perinatal Project pertaining to brompheniramine exposure in the first 3 lunar months of pregnancy (Ref. 3). This printout shows that during the first 3 lunar months of pregnancy, birth defects occurred in 4 children out of 22 mother-child pairs exposed to brompheniramine The structural birth defects were syndactyly (two cases), polydactyly, and pectus excavatum. Because it is generally accepted that the development of these structural malformations occurs in the first 3 lunar months of pregnancy and exposure to the drug during the fourth lunar month would not cause a structural birth defect (Refs. 4 and 5), the agency concludes that the two structural malformations mentioned by Heinonen, Slone, and Shapiro (Ref. 2) as occurring in mother-child pairs in the fourth lunar month are probably related to environmental factors or genetic factors or may be due to chance. In addition, the agency notes that all mothers of the four malformed children who were exposed to brompheniramine during the first 3 lunar months of pregnancy were also exposed to one or more other medications (Ref. 3).

The Heinonen, Slone, and Shapiro study was an exploratory investigation of several drugs and several possible adverse events. An exploratory study may identify possible associations and suggest areas for further study. However, without advance credibility of specific associations, an exploratory study is not the proper mechanism for confirming such associations. The agency concludes that an association cannot be confirmed from the same data set that suggested the association in the first place.

For the above reasons, this study does not establish a definite association between brompheniramine exposure and birth defects. The agency recognizes that this does not rule out the possibility that this association exists, but concludes that such an association is not supported by the study. In addition, Heinonen, Slone, and Shapiro do not make any statement specifically about brompheniramine teratogenicity and conclude that there was essentially no association between uniform malformations and the large categories of drug groups studied and that "there was no evidence to suggest that exposure to antihistamines * * * was related to malformations overall, or to large categories of major or minor malformations."

Based on the above information, the agency concludes that this study does not demonstrate that brompheniramine maleate is a teratogen. Further, the agency is not aware of any other studies that would establish a causal association between the use of brompheniramine maleate and birth defects. Thus, the agency believes that brompheniramine maleate when labeled with the pregnancy/nursing warning required in 21 CFR 201.63 is safe for OTC use and is including this ingredient in this final monograph.

References

(1) Berkowitz, R. L., D. R. Coustan, and T. K. Mochizuki, "Antihistamines (over-the-counter): Brompheniramine, Chlorpheniramine, Cyclizine, Doxylamine, Meclizine, Phenindamine, Pheniramine, Pyrilamine," *in* "Handbook for Prescribing Medications During Pregnancy," 1st Ed., Little, Brown and Co., Boston, pp. 24 and 26, 1986.

(2) Heinonen, O. P., D. Slone, and S. Shapiro, "Antinauseants, Antihistamines, and Phenothiazines," *in* "Birth Defects and Drugs in Pregnancy," Publishing Sciences Group, Inc., Littleton, MA, pp. 322–334 and 475, 1977.

(3) Excerpts of data from the Collaborative Perinatal Project of the National Institute of Neurological and Communicative Disorders and Stroke and Boston University, 1981, OTC Vol. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

(4) Shepard, T. H., "Catalog of Teratogenic Agents," 5th Ed., The Johns Hopkins University Press, Baltimore, p. xvii, 1986.

(5) Tuchmann-Duplessis, H., and P. Haegel, "Volume 2 Organogenesis," Springer-Verlag, New York, pp. 2–11, 1974.

9. One comment submitted data (Ref. 1) to support reclassification of phenyltoloxamine citrate from Category III to Category I at an adult dose of 30 to 60 mg every 4 to 6 hours, not to exceed 360 mg in 24 hours, and at a children's (ages 6 to 12 years) dosage equal to one-half the adult dose. The submitted data consisted of two clinical studies (Ref. 1) and a published pharmacology study (Ref. 2).

The agency has reviewed the submitted data and other information and determined that the data are not sufficient to establish the effectiveness of phenyltoloxamine citrate as an OTC antihistamine. The agency finds that the study design of the two clinical studies (CRD 85–17 and 85–18) is flawed, and the studies were not adequately controlled.

Study CRD 85–17 was a double-blind, parallel, placebo-controlled study involving 108 subjects ranging in age from 18 to 59 years with a confirmed diagnosis of seasonal allergic rhinitis. The study was designed to assess the antihistaminic effectiveness of phenyltoloxamine citrate in the treatment of seasonal allergic rhinitis. Subjects were randomized into one of three treatment categories: those taking the 30-mg test product, those taking the 60-mg test product, and those taking the placebo, for a 1-week period at a dosage of one capsule four times a day at 8:30 a.m., 12:30, 5:00, and 10:00 p.m. Measurement of the relief of symptoms was done in two ways: on days 1, 2, and 8, the symptoms were evaluated hourly from 8:30 a.m. to 4:30 p.m. at the study site by an investigator and the subject; on days 3 to 7, the effect of the test product on symptoms was evaluated by the subjects at home on four occasions (morning, noon, evening, and bedtime) and recorded in a diary.

The study results divide subjects into two groups: those who missed a dose of study medication and those who had to take rescue medication. These differences in the study subjects were subsequently ignored, and the two groups were combined (and included in the analysis of the results of this study) and considered as being similar. Even though the total number of each test group of subjects who missed a dose or took rescue medication was similar, there were differences in the number of subjects who had missed a dose versus those who took rescue medication in each group as follows: in the 30-mg dose group, three subjects took rescue medication and two subjects missed doses; in the 60-mg dose group, three subjects took rescue medication and three subjects missed doses; while in the placebo group, five subjects took rescue medication and one subject missed doses. In addition, there was a variance in the total number of days and dosage interval doses that were missed as well as when the rescue medication was taken. The agency believes that these differences should have been noted and considered in the analysis of the data rather than combined and ignored.

In analyzing this study, the agency noted considerable variation in the test results of the effect of the 30-mg drug product on symptom relief, which may be due to operative variables such as

variations in pollen counts and humidity that were not considered in the methodology of the study. For example, for the relief of nasal congestion, the data indicated that the active drug ingredient was more effective than the placebo on day 1 (at three observation points), on day 2 (at six points), and on day 8 (at five points). While these differences were between the lower 30-mg dose of the active drug and the placebo, the data show that at several of these same observation points this lower dose was more effective than the higher 60-mg dose of the drug. On days 4, 6, and 7, the difference between regimens (also in favor of the lower dose of active drug) was only apparent at one observation point. On days 3 and 5, no differences were noted. On days 2 and 8, there were 12 observation points, while on the other days, there were only 4 observation points. On days 2 and 8, the subjects remained indoors for 8 hours, while on days 3 through 7, the subjects were not confined and their whereabouts were not stated. Although statistical methods were not mentioned in detail, observation points were compared with baseline mean values and days were compared to days. Irrespective of the results, even if differences were demonstrated, it would be difficult to determine whether they were attributable to drug effect, a variation in the pollen count, humidity, or the effect of a controlled versus an uncontrolled environment. The agency believes that a comparison of effects for site days and a separate comparison of nonsite days would have reduced the uncontrolled operative variables.

The agency also found that differences between the three treatment groups with respect to relief of the symptoms of allergic rhinitis were not consistently demonstrated and were erratic. Further, on those days when differences were noted, it was difficult to determine whether the results were due to drug effect or the inadequacies of the study design and analysis. Phenyltoloxamine citrate was shown to be more effective than the placebo (i.e., with a statistically significant p value of 0.05 or less) on only one day (day 2) for relieving both wet and itchy symptoms. Further, on only a few occasions was the higher 60-mg dose of active drug more effective than the placebo. In addition, the lower 30-mg dose of active drug was found to be superior to both the higher 60-mg active drug dose and to the placebo. When the effects of the drug on wet and itchy symptoms were combined, the agency finds that statistically significant differences were recorded for only 3 out of the 59 observation points (on day 2 at 2:30 p.m., on day 6 at bedtime, and on day 7 in the morning). The data for nasal flow measurements demonstrated that on only one day was the 30-mg dose more effective than the 60-mg dose. In addition, the placebo appeared to be more effective than the 60-mg dose. Thus, the nasal flow measurements were not very helpful.

The protocol for study CRD 85-18 was essentially identical to study CRD 85–17 with the exception that there were 74 subjects who participated in the study. Other minor variations between the two studies included the following: (1) analysis of the data was done by comparing the effect of the active drugs and placebo on relieving the symptoms by days at study site, days at home, and by combining study site days and home site days, whereas study CRD 85–17 compared observation points on each day and overall days, and (2) a different grading system was used to record symptoms of a stuffy nose and the methodology of performing or recording nasal airway resistance. The second evaluation day was staggered over a 4-day period (either day 2, 3, 4, or 5), while in study 85–17, day 2 was always the second 8-hour evaluation day. The agency believes that these differences would tend to bias the results in favor of the active drug because there are less points of comparison in this study and the additional 3-day period would create a steady state condition. Even the comment concluded that the data were not supportive of any demonstrable efficacy for the active drug. The reported results of the study confirm this conclusion.

The agency disagrees with the comment's explanation of study CRD 85–18 and its contention that this study is incomplete and therefore inconclusive. The number of subjects recruited (74) for the study was adequate to demonstrate efficacy. In addition, carrying out the study over two allergy seasons (spring and fall) is not a reason to reject the study because symptoms of allergic rhinitis were required for entrance into the study. Also, the complexity of the case report forms for study CRD 85–18 was not greater than the complexity of the case report forms for study CRD 85–17, and thus is not a reason to reject the study. In fact, the design of study CRD 85–18 may have introduced bias into this study in favor of the active ingredient rather than the control, because steady state would more likely have been achieved on the staggered second evaluation day schedule that was used in this study.

The published study by Falliers et al. (Ref. 2) and the pharmacology study (Ref. 3) reviewed by the agency in the tentative final monograph for OTC antihistamine drug products (50 FR 2200 at 2208) are the same study. The agency stated in the tentative final monograph that this study demonstrated that there is a statistically significant difference between the pharmacologic action of a placebo and phenyltoloxamine citrate in favor of the active ingredient at 1- and 2-hour intervals after a single dose has been given. However, the study did not demonstrate the effectiveness of phenyltoloxamine over a long enough period of time that would be representative of the actual conditions under which the drug would be used. The agency stated that additional data from multiple-dose clinical studies carried out over a period of at least 1 week, and including an adequate number of patients per dose level of test ingredient and placebo, demonstrating the effectiveness of phenyltoloxamine would be necessary to reclassify this active ingredient in Category I. The agency's conclusions regarding that study remain the same. Further, the results of studies CRD 85–17 and 85–18 do not alter the agency's clinical opinion that these studies do not adequately support the effectiveness of phenyltoloxamine citrate as an OTC antihistamine.

Based on a lack of adequate clinical efficacy data, the agency concludes that phenyltoloxamine citrate should not be upgraded to monograph status. Therefore, this ingredient is not being included in this final monograph.

The agency's detailed comments and evaluations of the data are on file in the Dockets Management Branch (Ref. 4).

References

(1) Comments No. RPT003 and RPT004, Docket No. 76N–052H, Dockets Management Branch.

(2) Falliers, et al., "Inhibition of Cutaneous and Mucosal Allergy with Phenyltoloxamine," *Annals of Allergy*, 41:140–144, 1978.

(3) Comments No. C00168, LET003, and SUP007, Docket No. 76N–0052, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to E. H. Hanus, Richardson-Vicks, coded LET085, Docket No. 76N–052H, Dockets Management Branch.

10. One comment described personal experience in using several different antihistamines, including methapyrilene hydrochloride and pyrilamine maleate, for self-treatment of hay fever. The comment stated that these drugs worked well but noted that methapyrilene hydrochloride had been

removed from the market because it was a potent carcinogen in animal tests. The comment stated that it did not find pyrilamine maleate listed in the tentative final monograph and questioned whether pyrilamine maleate is similar to methapyrilene and whether it has been tested as cancer-causing.

The agency concluded in the tentative final monograph, based on data provided in a National Cancer Institute study, that methapyrilene is a potent carcinogen in animals and must be considered a potential carcinogen in man (50 FR 2200 at 2202). The agency initiated a recall of all oral and topical products containing methapyrilene and placed methapyrilene fumarate and methapyrilene hydrochloride in Category II (50 FR 2202). Thus, methapyrilene was not included in the tentative final monograph. However, pyrilamine maleate was proposed as a Category I antihistamine in the tentative final monograph (50 FR 2216).

Because of the similarity in chemical structure between pyrilamine and methapyrilene and because of the extensive use of pyrilamine maleate in both prescription and OTC drug products, it was nominated for testing by NCTR, under the auspices of the NTP (Ref. 1). Studies, in which pyrilamine was tested in rats and mice in chronic (104 weeks) bioassays, were completed in February and March 1987 and preliminary findings indicated no cancer-causing potential (Ref. 2). The final report was published in June 1991 with the conclusion that there was no evidence for a carcinogenic response to pyrilamine maleate by either F344 rats or B6C3F1 mice (Ref. 3). Based on the above information, the agency concludes that pyrilamine maleate is safe for OTC use and is including this ingredient in this final monograph.

References

(1) "Final Report—90 Day Subchronic Study Report on Pyrilamine in Fischer Rats," paragraph 1.0, Introduction, NCTR, Jefferson, AR, page 5, OTC Vol. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Memorandum of telephone conversation between G. Kerner, FDA, and W. Allaben, NCTR, January 27, 1989, OTC Vol. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

(3) Department of Health and Human Services, NTP, "Technical Report for Experiment No. 408 and 409 (NTP Experiments 05013–03 and 05013–04); Pyrilamine: 104 Week Chronic Dose Study in Rats, and Pyrilamine: 104 Week Chronic Dose Study in Mice," June 1991.

D. Comments on Dosages for OTC Antihistamine Active Ingredients

11. Two consumers questioned the safety of a higher dosage of chlorpheniramine maleate than previously permitted for OTC use. One consumer stated that a higher dosage of chlorpheniramine maleate may cause reactions and any antihistamine should be tested properly before the public is allowed to self-administer the product. Another consumer stated that the agency should warn against the overuse of OTC antihistamines. The consumer did not further elaborate on what was meant by the term "overuse."

The Panel reviewed extensive test data on antihistamine active ingredients, including chlorpheniramine maleate. The Panel recommended that a number of antihistamines could be generally recognized as safe and effective for OTC use in specified dosages and with specific labeling. In general, the agency has concurred with the Panel's recommendations.

Based on its review of clinical data on chlorpheniramine maleate, the Panel recommended that this ingredient be available OTC at a dosage that was twice that previously permitted for OTC use (41 FR 38312 at 38383). The Panel made this dosage recommendation because it found that chlorpheniramine maleate had not been shown to be effective for adults at a dose less than 4 mg. (The Panel recommended that the dose for children 6 to under 12 years of age be one-half the adult dose.) The Panel's proposed OTC dosage was as follows: adults, 4 mg every 4 to 6 hours, not to exceed 24 mg in 24 hours; children 6 to under 12 years of age, 2 mg every 4 to 6 hours, not to exceed 12 mg in 24 hours. The Panel noted that the chief side effect of chlorpheniramine maleate is sedation and recommended an appropriate warning, "May cause drowsiness." The Panel also recommended warnings that would inform the consumer to avoid driving a motor vehicle or operating heavy machinery and to avoid alcoholic beverages while taking a product containing this drug.

In the tentative final monograph for OTC antihistamine drug products (50 FR 2200), the agency concurred with the Panel's determination that an adult dose of less than 4 mg chlorpheniramine maleate is not effective (50 FR 2205) and that extensive data support the safety and effectiveness of the higher dosages for chlorpheniramine for OTC use (50 FR 2208). Further, the agency proposed a revised warning concerning the drowsiness effect of antihistamines to include sedatives and tranquilizers in addition to alcohol as drugs that may intensify the drowsiness effect of antihistamines (52 FR 31913).

With regard to warnings concerning the overuse of OTC antihistamine drug products, the agency believes that the required labeling set forth in this final monograph is adequate to provide for the safe and effective use of these products. Antihistamines have been used OTC for many years for the relief of the symptoms of hay fever and upper respiratory allergies (allergic rhinitis), which may be seasonal as well as perennial. It is generally recognized that these drugs are safe for their intended use under monograph conditions, even when used over extended periods of time and that the warnings required by this monograph would adequately address any concerns regarding any significant side effects that could occur.

A concern about two antihistamines being taken simultaneously was addressed in the tentative final monograph (50 FR 2203). The agency stated that it recognized that many products containing antihistamines for relieving symptoms of hay fever and the common cold are available in the OTC drug marketplace, but is unaware of any specific information that would raise health concerns about these products being marketed OTC under the conditions stated in the monograph. Because each product is required to be prominently labeled with the product's statement of identity, i.e., "antihistamine" (21 CFR 201.61), consumers are provided adequate information that these products contain an antihistamine drug. By reading the labels, consumers are informed that different drug products contain an antihistamine intended to treat the same symptoms. Thus, the agency believes that the likelihood that such products would be taken simultaneously is very low.

The agency therefore concludes that the warnings and directions set forth in this final monograph should provide for the safe and effective OTC use of antihistamine drug products and at this time there is no need to expand the monograph to include additional warnings against overuse of these products.

E. Comments on Labeling of OTC Antihistamine Drug Products

12. Two comments stated that FDA lacks statutory authority to prescribe exclusive lists of terms from which indications for use for OTC drug products must be drawn and to prohibit alternative labeling terminology which is truthful, accurate, not misleading, and intelligible to the consumer. One comment recommended that instead of prohibiting the use of alternative truthful terminology, FDA should

permit manufacturers to choose consumer oriented language to communicate the desired label indications, so long as such language is not false or misleading. Both comments noted that FDA proposed certain revisions to the "Exclusivity Policy" on April 22, 1985 (50 FR 15810) and stated that they would submit further comments on that proposal.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The final rule in this document is subject to the labeling provisions in § 330.1(c)(2).

13. One comment stated that the numerous pharmacological properties of diphenhydramine should permit a sleep-aid claim for this ingredient when it is used as an antihistamine. The comment noted that diphenhydramine has previously been classified Category I as a nighttime sleep-aid and requested that this type of claim be permitted in addition to the allowable antihistamine claims.

After this comment was submitted, the agency addressed the issue of "multi-use" labeling, i.e., labeling a drug product with some or all of the proven pharmacologic activities of the drug whether or not the conditions to be treated are related, in another segment (tentative final monograph) of the rulemaking for OTC cough-cold combination drug products (53 FR 30522 at 30551 to 30552). In that segment of the rulemaking for these drug products, the agency stated that there is no legal restriction that prevents multi-use labeling. For products that contain an ingredient with multi-use labeling, the labeling for each "different" use of the ingredient would have to be distinct and not confusing and would have to meet the requirements of the applicable OTC drug monographs in part 330 and the labeling requirements for OTC drugs in subpart C of 21 CFR part 201.

Thus, the manufacturer would need to provide labeling for all Category I intended uses in such a manner that the labeling for each approved indication that the manufacturer chooses to promote is distinct and not confusing. Labeling should be written so that consumers may readily understand the indications, directions for use, and warnings for each intended use. Further, the labeling must provide adequate information to prevent the possibility of overdosing and misuse when multiple and/or overlapping symptoms are self-treated.

As stated in the cough-cold combination drug products tentative final monograph, because of the labeling requirements and the need to provide information that is not confusing to consumers, the agency invites manufacturers to consult with it before labeling their OTC drug products with multi-use labeling.

14. One comment requested that the phrases "temporarily relieves" (proposed in the antihistamine tentative final monograph) and "for the temporary relief of" (proposed in the nasal decongestant tentative final monograph) be interchangeable.

The agency agrees with the comment. Because the phrases "for the temporary relief of" and "temporarily relieves" are interchangeable, the agency is including the option of using either phrase in the indications included in § 341.72(b) of this final monograph.

15. Three comments requested that manufacturers be allowed to use either of the indications proposed in § 341.72(b)(1) and (2) rather than be required to use both indications in the labeling of antihistamine drug products. The comments contended that an antihistamine product promoted primarily for a specific indication, i.e., for the common cold or for hay fever, should be allowed to use only the corresponding indication in its labeling. Two of the comments stated that the consumer market to whom allergy products are directed is different than the consumer market using cold products and that having both indications on the same product would confuse consumers looking for a product for only one of the specified indications. One comment added that, in its view, it is inappropriate to include allergy and hay fever indications in the labeling of an OTC combination drug product intended to be used for relieving symptoms of the common cold. The comments concluded that the wording of proposed § 341.72(b) should be changed from "limited to both" to "limited to one or both" (of the indications).

The agency agrees with the comments' arguments that for some OTC antihistamine-containing drug products it would be inappropriate to include both the allergy and common cold indications in the labeling. Where an antihistamine drug product is marketed generally as an antihistamine, it is beneficial to consumers to have all of the indications stated in the product's labeling, and manufacturers are encouraged to do so. However, when an antihistamine drug product is marketed for a specific target population (e.g., allergy sufferers) or when the antihistamine is present in a combination drug product marketed for a different specific target population (e.g., cold sufferers), the agency does not find that it is necessary for the products to be labeled with both the allergy and the common cold indications. The agency is addressing "allergy" indications only in this final rule and will respond to the comments' requests in a future issue of the **Federal Register** when a final decision is made on the use of antihistamines for symptoms of the common cold.

16. One comment submitted two consumer surveys to demonstrate that substantial numbers of consumers recognize that relief of "post-nasal drip" is a desirable end benefit and consequence of the use of OTC drug products containing antihistamines which, through their drying (anti-secretory) actions, relieve symptoms of sinus congestion and allergic rhinitis (hay fever) and, furthermore, that consumers clearly understand the term "post-nasal drip." The comment requested that indications pertaining to "post-nasal drip," i.e., "Helps (relieve, alleviate, decrease, reduce or dry up) post-nasal drip" be included in the final monograph for OTC antihistamine drug products and for OTC cough-cold combinations containing antihistamines.

The agency has reviewed the comment and other information and determined that the consumer surveys do not demonstrate the effectiveness of OTC antihistamine drug products in relieving "post-nasal drip." The two

consumer mail panel studies were designed to investigate consumer attitudes towards, and usage of, sinus and hay fever remedies. The agency notes that the comment stated that of the 263 responding sinus sufferers, 49 percent (129) considered relief of post-nasal drip important when choosing a sinus remedy. Similarly, 48 percent (119) of the 248 hay fever respondents indicated that relief of post-nasal drip was important when consumers choose a hay fever product.

The Panel referred to "checking post-nasal drip" as an unsubstantiated labeling claim unless studies specifically designed to assess this activity were presented (41 FR 38312 at 38415). The Panel did not assess this claim for antihistamines, but placed the claim in Category III for nasal decongestants. The Panel stated that studies of nasal decongestants have assessed the effect on nasal airway resistance or the ease of breathing but not the effect on rhinorrhea.

The submitted consumer surveys were not designed to demonstrate the effectiveness of OTC antihistamine drug products in relieving the symptom "post-nasal drip." In addition, the surveys do not define the term "post-nasal drip" or the ability of consumers to recognize specific symptoms that would allow them to determine whether they were experiencing "post-nasal drip." The consumer surveys do not demonstrate understanding of the term "post-nasal drip" or provide a basis for a "post-nasal drip" indication.

The agency has not approved a "post-nasal drip" claim in any new drug application for an antihistamine drug product. Clinical studies specifically designed to demonstrate the effectiveness of antihistamines in relieving "post-nasal drip" would be necessary before this claim could be used in the labeling of any antihistamine drug product. Such studies should be designed to evaluate the symptoms of "post-nasal drip" in terms of specific symptoms that can be recognized by consumers as "post-nasal drip." The agency suggests that any party interested in studying the use of an antihistamine for this claim meet with the agency to discuss an appropriate protocol before beginning the study For the above reasons, indications pertaining to "post-nasal drip" are not being included in this final monograph for OTC antihistamine drug products.

17. Noting that, in the tentative final monograph (50 FR 2200 at 2203), the agency proposed to exclude "sinus congestion" as an approved indication for single-ingredient antihistamine drug products, one comment requested that "sinus congestion" be an approved indication for combination drug products containing an oral nasal decongestant and an antihistamine. The comment noted the Panel's recommendation that "any single [Category I] antihistamine * * * may be combined with any [Category I] single oral nasal decongestant active ingredient * * *" (41 FR 38312 at 38420) and urged FDA to adopt this recommendation and to include "sinus congestion" as an approved indication for such combination drug products.

The agency reaffirms its conclusion as stated in the tentative final monograph that data have not demonstrated that antihistamines are effective in the treatment of "sinus congestion." Therefore, such claims for single-ingredient OTC antihistamine drug products are not included in this final monograph.

In § 341.80(b)(2) of the tentative final monograph for OTC nasal decongestant drug products (50 FR 2220 at 2238), the agency proposed the following indications that refer to sinus congestion for nasal decongestant drug products:

(iv) "Helps decongest sinus openings and passages; relieves sinus pressure."

(v) "Promotes nasal and/or sinus drainage; relieves sinus pressure."

In the tentative final monograph for OTC cough-cold combination drug products, the agency proposed that combination drug products containing an oral nasal decongestant and an antihistamine be Category I (53 FR 30522 at 30561). Such combination drug products can be labeled with the indications that are applicable to each pharmacologic group included in the combination. Therefore, under the tentative final monograph for OTC nasal decongestant drug products (50 FR 2238) and the tentative final monograph for OTC cough-cold combination drug products (53 FR 30561 to 30562), combination products containing a Category I oral nasal decongestant and a Category I antihistamine can be labeled with indications relating to "sinus congestion."

18. One comment objected to the proposed elimination of the term "Caution(s)" in the labeling of OTC drug products. The comment contended that "Warnings" are harsher (stronger) and more serious than "Cautions" and even preclude use of a product under certain conditions. The comment stated that a "Caution," on the other hand, does not preclude use unless something occurs during use; but it often alerts the consumer to a potential problem. The comment added that a caution may also address a monitoring function to be performed while the product is in use. The comment felt that it is important for the consumer to be able to distinguish between precautionary statements and more serious warnings. Also, because the same phrases may be warnings with regard to one class of products and merely cautions with regard to another, the comment stated that flexibility to use both terms is essential in order to prepare accurate and comprehensible labeling.

Another comment suggested that the agency differentiate between "Warnings," "Cautions," and "Precautions" in OTC drug product labeling. The comment stated that the term "Warning" is the strongest of the terms and should be taken the most seriously. The comment contended that the term "Caution" should be used to convey important information related to the safe and effective use of the product but which allows for judgment on the part of the user, e.g., "This product may cause drowsiness." The comment felt that it undermines the importance of a "Warning" section if it contains too much information or if it includes less than serious language. The comment provided examples of the types of information that it considered appropriate as warnings and cautions for products containing the maleate salts of brompheniramine, chlorpheniramine, dexbrompheniramine, and dexchlorpheniramine.

Section 502(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(2)) states, in part, that any drug marketed OTC must bear in labeling "* * * such adequate warnings * * * as are necessary for the protection of users * * * ." Section 330.10(a)(4)(v) of the OTC drug regulations (21 CFR 330.10(a)(4)(v)) provides that labeling of OTC drug products should include "* * * warnings against unsafe use, side effects, and adverse reactions * * * ."

The agency notes that historically there has not been consistent usage of the signal words "warning" and "caution" in OTC drug labeling. For example, in §§ 369.20 and 369.21 (21 CFR 369.20 and 369.21), which list "warning" and "caution" statements for drugs, the signal words "warning" and "caution" are both used. In some instances, either of these signal words is used to convey the same or similar precautionary information. In addition, the term "precaution(s)," as in "Drug Interaction Precaution(s)" is often used in OTC drug monographs, but is listed under "Warnings" as, for example, in the rulemakings for OTC nasal decongestant drug products and OTC

bronchodilator drug products. (See the Federal Register of January 15, 1985 (50 FR 2220 at 2239) and October 2, 1986 (51 FR 35326 at 35339), respectively.)

FDA has considered which of these signal words would be most likely to attract consumers' attention to that information describing conditions under which the drug product should not be used or its use should be discontinued. The agency concludes that the signal word "warning" is more likely to flag potential dangers so that consumers will read the information being conveyed. The agency is not convinced that consumers will make the distinctions between "warnings" and "cautions" that the comments have made. Further, the agency does not believe that the importance of the "Warnings" section will be undermined if all of the information about unsafe use, side effects, and adverse reactions is presented under a single heading. Therefore, FDA has determined that the signal word "warning," rather than the word "caution," will be used routinely in OTC drug labeling that is intended to alert consumers to potential safety problems. However, except in instances where the agency has stated that a particular warning statement must appear as the first warning after the "Warnings" heading, the agency has no objections if manufacturers list the various warnings statements in their order of preference, e.g., listing first those they consider more serious followed by those they consider to be less serious statements. Drug interaction precaution information will continue to be listed under the heading "Drug Interaction Precautions" as part of the warnings information.

19. One comment stated that the Panel made a factual error in the number of subjects in a study (Ref. 1) mentioned in its discussion of phenindamine tartrate (41 FR 38312 at 38388). The Panel's report stated that 250 subjects were in the study, whereas the article (Ref. 1) indicated that 1,589 subjects were observed. The comment contended that this large discrepancy in the number of subjects in the study is significant with respect to the validity of the study data on the frequency of stimulation or drowsiness and thus phenindamine tartrate should be exempt from the Panel's proposed warning regarding the occurrence of drowsiness as a side effect. [Note: This comment was submitted after the administrative record following publication of the advance notice of proposed rulemaking closed and thus was not discussed in the tentative final monograph.]

The agency has reviewed the discrepancy described by the comment and agrees that the correct number of subjects in the study is 1,589, not 250 as mentioned in the Panel's report. Although the agency is unable to ascertain how the number 250 appeared in the Panel's report, it appears that the Panel based its conclusions on the study's actual findings that 3 percent (51) of the 1,589 subjects experienced drowsiness and 12 percent (196) of the 1,589 subjects experienced stimulation. (See Table II at page 478 of Ref. 1.) Based on these percentages and the number of subjects, the agency agrees with the Panel's conclusion that "data that would establish the frequency of stimulation or drowsiness among those taking the drug in recommended dosages are inadequate and cannot be used for making phenindamine an exception with respect to a warning regarding the occurrence of drowsiness as a side effect" (41 FR 38388). The comment did not submit additional data to support an exemption from this warning for phenindamine tartrate. Therefore, the warning "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery," in § 341.72(c)(3) of the final monograph is required for OTC antihistamine drug products containing phenindamine tartrate.

Reference

(1) Loveless, M. H., and M. Dworin, "Allergy and Antihistamine Therapy. A Review," *Bulletin of the New York Academy of Medicine*, 25:473–487, 1947.

20. Several comments stated that it is difficult to read labels of antihistamine drug products because the print on the labels is small. The comments were particularly concerned that the required warnings would not be legible and thus could lead to adverse use of the product. The comments requested larger print size and greater prominence of warnings on antihistamine drug products. One comment added that most OTC antihistamine products are very repetitious in their warning labeling and recommended bold lettering or a colored label to enhance warning statements.

The agency believes that the labeling proposed in this final monograph includes only essential information that is necessary to assure proper and safe use of OTC antihistamine drug products by consumers. Moreover, the labeling of drugs must comply with section 502(c) of the act (21 U.S.C. 352(c)) which states that a drug shall be deemed to be misbranded "If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

When an OTC drug product is packaged in a container that is too small to contain all the required labeling, the agency recommends that the product be enclosed in a carton or be accompanied by a package insert or booklet that contains the information complying with the monograph. Manufacturers are also encouraged to print a statement on the product container label, carton, or package insert suggesting that the consumer retain the carton or package insert for complete information about the use of the product when all the required labeling does not appear on the product container label. Manufacturers who use this supplemental labeling should be able to readily provide all labeling information in a larger print size than if all of the labeling is presented on the immediate container. Further, the agency is aware that many manufacturers use bold lettering and a colored label to emphasize certain labeling information, including warnings, on the immediate container and in package inserts. All manufacturers are encouraged to use these as appropriate to highlight and emphasize certain labeling information for consumers. The agency recently published a request for public comment (56 FR 9363 to 9365, March 6, 1991) on the issue of print size and style of labeling for OTC drug products, and will evaluate comments received before making a final decision on the feasibility of establishing a Federal regulation pertaining to print size and style of OTC labeling. In addition, the Nonprescription Drug Manufacturers Association(NDMA) has recently promulgated guidelines for industry to consider when examining product labels for readability and legibility (Ref. 1). These guidelines are designed to assist manufacturers in making the labels of OTC drug products as legible as possible. The agency commends this voluntary effort and urges all OTC drug manufacturers to examine their product labels for legibility.

Reference

(1) "Label Readability Guidelines," NDMA, Washington, copy included in OTC Vol. 04HFM, Docket No. 76N-052H, Dockets Management Branch.

21. One comment recommended removal of the phrase "difficulty in breathing" from the proposed warning in § 341.72(c)(2), which states "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor." The comment contended that the phrase "difficulty in breathing" is redundant because the terms asthma, emphysema, chronic pulmonary disease, and shortness of breath specifically describe those breathing problems which may contraindicate antihistamine use The comment added that the phrase "difficulty in breathing" is too broadly worded and could be interpreted by consumers to mean "difficulty in nasal breathing." The comment argued that such an interpretation could lead to consumer confusion in reading the labeling of an OTC cough-cold combination drug product containing an antihistamine and a nasal decongestant. Such a product would be indicated for relieving nasal congestion but would also state not to use the product if you have difficulty in [nasal] breathing. The comment concluded that removal of the phrase "difficulty in breathing" from the warning would lessen consumer confusion caused by the labeling of some combination products without changing the substance of the warning information provided to consumers.

The agency proposed the warning in § 341.72(c)(2) in the tentative final monograph for OTC antihistamine drug products based on the medical rationale that antihistamines should not be used by patients with any obstructive pulmonary disease in which clearance of secretions is a problem (50 FR 2200 at 2215). In making this proposal, the agency stated that respiratory distress symptoms such as difficulty in breathing and shortness of breath are characteristic of chronic obstructive pulmonary disease. The agency concluded that such descriptive terms should also be included in the warning in addition to the names of the diseases in order to provide more information to the consumer.

The agency disagrees with the comment that the phrase "difficulty in breathing" will be confusing to consumers using single ingredient antihistamine drug products because such products are not indicated for the relief of nasal congestion. However, the agency does believe that using the broader phrase "breathing problems" to describe such symptoms (e.g., "shortness of breath" and "difficulty in breathing") related to obstructive pulmonary disease would allow the consumer to more readily recognize any respiratory distress symptoms that he/she may experience. Therefore, the agency is deleting the phrases "shortness of breath" and "difficulty in breathing" and replacing them with the phrase "breathing problem" in the warning in § 341.72(c)(2) of this final monograph.

At a meeting on June 11 and 12, 1990, the agency's Pulmonary-Allergy Drugs Advisory Committee discussed the need to continue labeling prescription and OTC antihistamine drug products with a warning against the use of antihistamines by people with asthma (Ref. 1). Participants at the meeting expressed the belief that the warning is no longer accurate, and questioned the continued validity of the reasoning for the warning. It was noted that early first-generation antihistamines, which are no longer on the market, had anticholinergic activity that could be a problem in asthma, but that the newer compounds have been shown to be mildly effective as well as safe in people with asthma. An agency consultant stated that the problem is that many asthmatic patients are also afflicted with upper-airway disorders, and the prescribing physician is on the horns of a dilemma because there is a labeled contraindication about the use of antihistamines by people with asthma, but there is also evidence to show that antihistamines are safe for use by asthmatics. This anomaly places physicians in the awkward position of telling patients to ignore a labeled warning.

The consultant presented a survey of published medical reports and literature to support the position that antihistamines should not be contraindicated in people with asthma unless an individual has previously experienced an adverse reaction (Refs. 2 through 24). Positive effects of antihistamines on asthma have been reported. Investigators have shown that antihistamines may inhibit exercise-induced asthma (Refs. 4, 5, 9 through 12, and 23), and that they may prevent histamine-induced and allergen-induced bronchospasm (Refs. 2, 4, 6, 7, 8, 10, 13, 19, 20, and 23). Further, antihistamines have been demonstrated to be mild bronchodilators that improve pulmonary function (Refs. 4, 5, 10, 19, 23, and 24). A reduction of pulmonary function has been observed following diphenhydramine, hydroxyzine, and brompheniramine challenges in asthmatic children, but premedication with bronchodilators prevented the decrease (Refs. 14 and 15). Some studies suggest the beneficial effects of antihistamines are dose related (Refs. 4, 5, 9, 12, and 23), while one investigator observed that low concentrations inhibit histamine release, but high concentrations may stimulate histamine release, in vitro, in the absence of antigen challenge (Ref. 12). It is generally believed that histamine released from airway mast cells is a major mediator of bronchospasm, although other mediators may be involved (Refs. 3, 4, 6, 7, 8, 10, 19, 20, 21, 23, and 24). Therefore, as far as the treatment of asthma is concerned, an antihistamine is not the drug of first choice (Refs. 17 and 23), but it need not be withheld from asthmatics who are also afflicted with upper-airway disorders. There does not seem to be any direct evidence that anticholinergic effects of some antihistamines will cause drying of bronchial secretions and exacerbate asthma (Refs. 17 and 23).

The advisory committee was asked to vote on the question of whether current evidence supports continued use of the warning statement about possible adverse effects of antihistamines on asthma. The advisory committee recommended to FDA by a vote of seven to zero, with one abstention, that current evidence does not support continuation of the warning regarding possible adverse effects of antihistamines when used by asthmatic patients and the warning should be rescinded (Ref. 1).

The agency has evaluated the references cited by the consultant (Refs. 2 through 24) and concludes that it concurs with the advisory committee's recommendation. Accordingly, in this final rule, the agency is removing the descriptive term "asthma" from the warning included in § 341.72(c)(2).

In the tentative final monograph for OTC antihistamine drug products (50 FR 2200 at 2215), the agency proposed the descriptive term "chronic pulmonary diseases" to cover all types of chronic obstructive pulmonary diseases such as emphysema and chronic bronchitis. However, because consumers may associate the term "chronic pulmonary disease" with asthma, the agency now believes that this term is no longer appropriate and that clarifying the term would be more helpful to consumers. The agency believes that consumers will recognize and understand the terms chronic bronchitis and emphysema and is

replacing the term "chronic pulmonary disease" with "chronic bronchitis" in the warning. The term emphysema already appears in the warning.

With regard to OTC cough-cold combination drug products containing an antihistamine and a nasal decongestant, the agency concurs with the comment that consumers might confuse a phrase describing breathing problems associated with emphysema or chronic bronchitis with those breathing problems associated with nasal congestion when taking an OTC cough-cold combination drug product containing an antihistamine and a nasal decongestant. Thus, to clarify the warning and to avoid any confusion regarding the phrase "breathing problem" for consumers using an OTC cough-cold drug product labeled with antihistamine and nasal decongestant claims, the agency is revising the wording of the warning appearing in § 341.72(c)(2) of this final monograph to associate the breathing problems with the conditions for which an antihistamine should not be used.

Therefore, the agency is revising the warning in § 341.72(c)(2) to reflect the changes discussed above as follows: "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland." The warning has also been revised to group the breathing conditions together in one part of the warning, followed by the other conditions for which the drug should not be used unless directed by a doctor. Likewise, the corresponding warning in § 341.72(c)(6)(i) for products that are labeled only for use by children under 12 years of age is being revised in a similar manner to read: "Do not give this product to children who have a breathing problem such as chronic bronchitis or who have glaucoma, without first consulting the child's doctor." Under proposed § 341.85(c) in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30561), these revised warnings will be applicable to any OTC cough-cold combination drug products containing an antihistamine and a nasal decongestant.

References

(1) Transcript of the June 12, 1990 meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, pp. 154–172, in OTC Vol. 04HFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Hamid, M., P. Rafferty, and S. T. Holgate, "The Inhibitory Effect of Terfenadine and Flurbiprofen on Early and Late-Phase Bronchoconstriction Following Allergen Challenge in Atopic Asthma," *Clinical and Experimental Allergy*, 20:261–267, 1990.

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22. One comment contended that proposed § 341.72(c)(3) and (4) which presently state "May cause (marked) drowsiness; alcohol may increase the drowsiness effect. Avoid alcoholic beverages while taking this product * * *." may cause confusion for consumers taking a product formulated with alcohol in that they may interpret the warnings to mean that the products should not be used at all. The comment requested changes in this warning, for products formulated with alcohol and labeled for nighttime use, and suggested the addition of the following as an alternative to § 341.72(c)(3) and (4): "May cause (marked) drowsiness; this product is formulated with alcohol which may increase the drowsiness effect. While taking this product, avoid alcoholic drinks or other products with alcohol."

The agency notes that this comment was submitted before the agency published an amendment to the tentative final monograph for OTC antihistamine drug products in the **Federal Register** of August 24, 1987. In that amendment, the agency revised the proposed warnings in § 341.72(c)(3) and (4) to read as follows: "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

The intended message of the warnings in § 341.72(c)(3) and (4) is to inform

consumers to avoid alcoholic beverages when using OTC antihistamines because alcoholic beverages may increase the drowsiness effect of the antihistamine. The agency does not believe that a consumer would equate a drug product containing alcohol with an alcoholic beverage and thus construe these warnings to mean that the drug product should not be used. Additionally, the comment did not provide any data supporting its contention that the proposed warning is confusing. Finally, the agency does not believe that products formulated with alcohol and labeled for nighttime use should have a different warning. The agency is aware that such products often are also labeled for use during the day and are, in fact, used by consumers during the day whether or not they contain labeling for this use. The agency believes that products containing an antihistamine should contain the same warnings, with the only exception being that the word "marked" is required for several of the antihistamines to describe the degree of drowsiness that may occur. Therefore, the agency is not including the comment's suggested alternative in § 341.72(c)(3) and (4) of this final monograph, but is including the warning that was proposed in the amendment to the tentative final monograph for OTC antihistamine drug products, as stated above.

23. One comment suggested that labeling for drug products containing diphenhydramine, chlorpheniramine, and related substances should contain warnings of possible effects on the heart, particularly heart problems requiring treatment with beta blocker drugs. The comment based its suggestion on a personal experience while using a prescription drug product containing diphenhydramine "for a bad case of allergy" and, subsequently, using an OTC drug product containing chlorpheniramine. The comment contended that these drugs "began to cause trouble, a stepped-up heart beat, and a very disabling weak feeling in the chest."

The agency has reviewed the Panel's report with respect to side effects of the antihistamines. The Panel stated that the most common side effects are drowsiness and dryness of the mouth (41 FR 38312 at 38380). The Panel also stated that other side effects which are not as common have been reported in scientific texts but are poorly documented and often cannot be definitely ascribed to antihistamines. These include gastrointestinal effects and cardiovascular symptoms which may include palpitations, hypotension, headache, or tightness of the chest (41 FR 38380). The Panel concluded that serious side effects produced by the antihistaminic drugs in the dosages recommended for OTC use are rare and the more common side effects are rarely serious (41 FR 38380). In addition, in its safety discussions of diphenhydramine (41 FR 38340, 38341, 38384, and 38385), chlorpheniramine (41 FR 38383 and 38384), or any other Category I antihistamine, the Panel did not cite any cardiovascular problems associated with the use of these ingredients as mentioned specifically by the comment. The comment did not submit any data to support its suggestion to add warnings concerning cardiovascular effects to the labeling of OTC antihistamine drug products beyond reporting one personal experience.

Based on the Panel's determination that cardiovascular symptoms rarely occur with the use of OTC antihistamines, and the lack of other information, the agency concludes that there is not an adequate basis for OTC antihistamine drug products to bear label warnings regarding possible adverse cardiovascular effects. Accordingly, the agency is not including such warnings in this final monograph.

24. One comment suggested that all antihistamine drug products contain warnings to the elderly that these products may produce congestion in the lungs, particularly in case of bronchitis, flu, pneumonia, or even a bad cold.

The comment did not provide any data demonstrating that lung congestion results from taking an OTC antihistamine drug product. The agency is not aware of any studies or published literature that would support the comment's statement. If lung congestion occurs when a person has bronchitis, flu, pneumonia, or a bad cold, it would appear that the congestion is likely the result of the underlying condition. The agency does not believe that a warning expanded beyond that discussed in comment 21, "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostrate gland," is warranted at this time.

25. Two comments requested that the agency include the symptomatic treatment of allergic itching as a monograph condition in the final monograph for OTC antihistamine drug products. One comment requested this indication specifically for oral diphenhydramine, while the other comment requested the indication for all orally administered OTC antihistamines.

The comment that requested monograph status for oral diphenhydramine requested the following indication: "For temporary relief of itching associated with hives, minor skin irritations, or rashes due to food or animal allergies, insect bites, inhaled allergens (dust, mold, spores), poison ivy, oak, or sumac, soaps, detergents, cosmetics, and jewelry." The comment contended that the proposed indication involves only symptoms which consumers can recognize and treat, and that the indication is currently approved for prescription dispensing of diphenhydramine hydrochloride at the dose already accepted for OTC marketing. This comment was subsequently withdrawn, but no reasons were given (Ref. 1).

The second comment cited statements from three references to support the effectiveness of orally administered antihistamines for the relief of pruritus, angioedema, and other manifestations of skin allergies: (1) prior administration of chlorpheniramine raised the itch thresholds to both 2-methyl histamine and histamine itself (Ref. 2), (2) traditional antihistamines of the H1 type are the mainstay in the management of urticaria (Ref. 3), and (3) certain of the allergic dermatoses respond favorably to H1 blockers; H1 blockers also have a place in the treatment of itching pruritides; and some relief may be obtained in many patients suffering atopic dermatitis and contact dermatitis, although topical corticosteroids seem to be more valuable in such diverse conditions as insect bites and ivy poisonings (Ref. 4). The comment requested that the indications in § 341.72(b) be expanded to permit the following claim: "* * * or the itching skin caused by allergy to local irritants such as poison ivy, oak, or sumac, or caused by hives."

The agency has reviewed the information provided by the comment and determined that it is insufficient to support general recognition of the symptomatic treatment of allergic itching as an appropriate OTC indication for oral antihistamine drug products. Hives and pruritic rashes secondary to foods, animal allergies, and insect stings and bites can be one component of a systemic anaphylactic reaction, and the use of an OTC antihistamine could potentially delay more appropriate treatment that may be needed. The agency is unaware of any data demonstrating that the average person can distinguish between a mild allergic reaction and a life-threatening reaction that may begin with itching only. Histamine is only one of the mediators released during mast cell

degranulation (Ref. 5). Therefore, the use of an antihistamine alone may not be sufficient.

The agency does not find that the references cited by the comment support OTC use of oral antihistamines for pruritus, angioedema, and other manifestations of skin allergies. For example, Monroe (Ref. 3) also said that the ideal treatment for urticaria is identification and removal of its cause and that oral antihistamines of the H1 type are the usual medical treatment for acute urticaria, but medical management is required in severe urticarial reactions. Further, the edition of Goodman and Gilman cited by the comment included in its discussion of allergic dermatoses the caveat that, although angioedema is responsive to treatment with antihistamines, the paramount importance of epinephrine in the severe attack must be emphasized (Ref. 4). This caution is carried through to the current edition of Goodman and Gilman as well (Ref. 5). Poison ivy, oak, and sumac are examples of contact dermatitis. The Merck Manual (Ref. 6) states that, although an oral corticosteroid should be given in severe cases and the treatment for contact dermatitis is usually topical corticosteroids, antihistamines are ineffective in cases of contact dermatitis except for their sedative effect.

Based upon currently available data, the agency concludes that there is a lack of information to support an OTC indication for allergic itching related to hives and rashes. Thus, the use of OTC oral antihistamines for self-treatment of these problems remains a nonmonograph condition at this time.

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II. Summary of Significant Changes From the Proposed Rule

1. The agency has determined that diphenhydramine citrate should be included in this final monograph because the citrate salt of diphenhydramine is identical to the hydrochloride salt. A dose of 76 mg diphenhydramine citrate supplies an equivalent amount of diphenhydramine content as 50 mg diphenhydramine hydrochloride. Therefore, the agency is revising the letter designations of active ingredients in § 341.12 *Antihistamine active ingredients* to include the addition of diphenhydramine citrate in this section. The agency is also revising and redesignating the paragraphs in §§ 341.72 (c) and (d) and 341.90 to reflect this addition to § 341.12. (See comment 4.)

2. In order to allow for greater flexibility in indication statements, the agency is revising and expanding § 341.72(b) to allow for the option of using either the phrase "Temporarily relieves" or "For the temporary relief of." This revision results in the addition of a new indication in § 341.72(b)(2); proposed § 341.72(b)(2) (indication for a cold) is temporarily removed while the agency further assesses the use of antihistamines for relieving symptoms of a cold. New § 341.72(b)(2) now reads as follows: "For the temporary relief of runny nose, sneezing, itching of the nose or throat, and itchy, watery eyes due to hay fever" (which may be followed by one or both of the following: "or other upper respiratory allergies" or "(allergic rhinitis)"). (See comment 14.)

3. The agency is clarifying and revising the warning in § 341.72(c)(2) so that the consumer will not confuse "breathing problems" associated with nasal congestion with "breathing problems" associated with emphysema or chronic bronchitis (conditions for which an antihistamine should not be used) when taking an OTC cough-cold combination drug product containing an antihistamine and a nasal decongestant and to delete the term "asthma." The agency is revising the warning to read as follows: "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland." Likewise, the corresponding warning in § 341.72(c)(6)(i) for products that are labeled only for use by children under 12 years of age is also revised to read as follows: "Do not give this product to children who have a breathing problem such as chronic bronchitis or who have glaucoma, without first consulting the child's doctor." (See comment 21.)

4. The agency is deferring its final decision on the monograph status of doxylamine succinate. Thus, the agency has deleted this ingredient from § 341.12 of the monograph, all references to this ingredient from headings in the monograph, and the directions for the use of this ingredient from § 341.72(d) and 341.90.

5. The agency is revising the letter designations proposed on January 15, 1985, and August 24, 1987, in the following sections: in § 341.3 *Definitions*, (d) is being redesignated as (e); and in § 341.90 *Professional Labeling*, paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) have been redesignated as paragraphs (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), and (q), respectively. The redesignated paragraph "l" is being reserved because the agency is deferring its final decision on the status of doxylamine succinate. Also, new paragraph (j) for the ingredient diphenhydramine citrate is being added to § 341.90.

6. The agency is deferring its final decision on the OTC claim for the common cold proposed in § 341.72(b) of the tentative final monograph until the scientific debate about such use is resolved as discussed above. Thus, the agency is deleting the portion of the definition proposed in § 341.3(e) that refers to the common cold and the indication proposed in § 341.72(b) for the use of OTC antihistamines for symptoms of the common cold.

III. The Agency's Final Conclusions on OTC Antihistamine Drug Products for Relief of Symptoms of Hay Fever and Upper Respiratory Allergies (Allergic Rhinitis)

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC antihistamine drug products are generally recognized as safe and effective and not misbranded for relief of symptoms of hay fever and upper respiratory allergies (allergic rhinitis). Specifically, the following ingredients are included in this final monograph for OTC antihistamine use: brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, diphenhydramine citrate, diphenhydramine hydrochloride, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, and triprolidine hydrochloride. The following ingredients for OTC

antihistamine use considered in this rulemaking are nonmonograph ingredients: methapyrilene fumarate, methapyrilene hydrochloride, phenyltoloxamine dihydrogen citrate, promethazine hydrochloride, thenyldiamine hydrochloride, and tripelennamine hydrochloride. The agency has established 21 CFR 310.545 in which it lists certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. Methapyrilene hydrochloride, methapyrilene fumarate, and thenyldiamine hydrochloride are presently listed in § 310.545(a)(6)(i) for antihistamine drug products. In this final rule, the agency is amending § 310.545(a)(6)(i) by adding phenyltoloxamine dihydrogen citrate. Promethazine hydrochloride (as a single ingredient) and tripelennamine hydrochloride are not included in § 310.545 because these ingredients have not been marketed OTC and were considered in this rulemaking only as possible prescription-to-OTC switch drugs. Promethazine hydrochloride in cough-cold combination drug products will be discussed in the final rule for OTC cough-cold combination drug products in a future issue of the **Federal Register**. The use of antihistamines to relieve symptoms of a cold will be discussed in a future issue of the **Federal Register**.

Any drug product marketed for use as an OTC antihistamine drug product that is not in conformance with the monograph (21 CFR part 341, subparts A, B, and C) (except the labeling of an antihistamine included in the monograph to relieve symptoms of a cold) is considered misbranded under section 502 of the act (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application or abbreviated application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any OTC antihistamine drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulations is subject to regulatory action. The effective date of this final monograph does not apply to antihistamines marketed for relief of symptoms of a cold. Such products may remain in the marketplace while the agency continues its review of antihistamines for this use. However, any product containing an antihistamine and labeled for use to relieve both symptoms of hay fever and a cold must bear all of the required monograph labeling on or before the effective date of this final rule. Manufacturers of products containing an antihistamine labeled only to relieve symptoms of a cold are encouraged to voluntarily label the product with all of the information required by this final monograph. However, such products may not bear the FDA "APPROVED USES" language provided for in § 330.1(c)(2)(i).

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 2200 at 2215 through 2216 and 52 FR 31892 at 31911). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC antihistamine drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antihistamine drug products is not expected to pose such an impact on small businesses. This final rule will require some relabeling for products containing monograph ingredients. Manufacturers will have one year to implement this relabeling. This final rule does not affect antihistamine products labeled to relieve symptoms of a cold. This final rule will also require reformulation of a few products containing phenyltoloxamine dihydrogen citrate. For all other nonmonograph active ingredients listed above, the effective date was May 7, 1991. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency is removing § 201.307 and removing the exemption for certain drugs limited by NDA's to prescription sale in § 310.201(a)(25) (applicable to chlorcyclizine hydrochloride preparations) because most portions of those regulations are superseded by the requirements of the antiemetic final monograph (21 CFR part 336) and the antihistamine final monograph (21 CFR part 341) (for chlorcyclizine hydrochloride). Section 201.307 also addresses the marketing of parenteral drugs containing chlorcyclizine, cyclizine, or meclizine. These products are all marketed as prescription drugs and, as such, must comply with the pregnancy labeling requirements of § 201.57 (21 CFR 201.57). Accordingly, § 201.307 is no longer required. The agency is also adding and reserving paragraph (b) in § 310.201, and amending an entry in §§ 369.20 and 369.21. The items being removed include: (1) all of § 201.307; (2) § 310.201(a)(25); and (3) the references to § 201.307 and § 310.201(a)(25) in the introductory text of the entry for "ANTIHISTAMINICS, ORAL" in § 369.20. The agency is also removing the reference to paragraph (a)(6) of § 310.201 in this same entry because that paragraph was removed on April 30, 1987 and reserved for future use. (See 52 FR 15886 at 15892.) In this final rule, the agency is amending § 310.545 by adding phenyltoloxamine dihydrogen citrate in paragraph (a)(6)(i), and by adding new paragraph (d)(6). The agency is also revising the entry for "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, AND CHLORCYCLIZINE HYDROCHLORIDE PREPARATIONS)" in § 369.21 by revising the introductory text and by removing those portions of the entry pertaining specifically to chlorcyclizine hydrochloride, including the references to § 201.307 and paragraphs (a)(6) and (a)(25) of § 310.201 in this entry.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Antihistamine drug products, Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201, 310, 341, and 369 are amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 376); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

§ 201.307 [Removed]

2. Section 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements* is removed from subpart G.

PART 310—NEW DRUGS

3. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.201 [Amended]

4. Section 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(25) and reserving it, and by adding and reserving paragraph (b).

5. Section 310.545 is amended by revising paragraph (a)(6)(i), paragraphs (d) introductory text and (d)(1), and by adding new paragraph (d)(6) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(i) *Antihistamine drug products.* (A) *Ingredients.*

Methapyrilene hydrochloride
Methapyrilene fumarate
Thenyldiamine hydrochloride

(B) *Ingredient.*

Phenyltoloxamine dihydrogen citrate

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(6) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(6)(i)(A), (a)(6)(ii), (a)(7) (except as covered by paragraph (d)(3) of this section) through (a)(19) of this section.

* * * * *

(6) December 9, 1993, for products subject to paragraph (a)(6)(i)(B) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

6. The authority citation for 21 CFR part 341 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).

7. Section 341.3 is amended by adding new paragraph (e) to read as follows:

§ 341.3 Definitions.

* * * * *

(e) *Antihistamine drug.* A drug used for the relief of the symptoms of hay fever and upper respiratory allergies (allergic rhinitis).

8. Section 341.12 is added to subpart B to read as follows:

§ 341.12 Antihistamine active ingredients.

The active ingredient of the product consists of any of the following when used within the dosage limits established for each ingredient:

(a) Brompheniramine maleate.
(b) Chlorcyclizine hydrochloride.
(c) Chlorpheniramine maleate.
(d) Dexbrompheniramine maleate.
(e) Dexchlorpheniramine maleate.
(f) Diphenhydramine citrate.
(g) Diphenhydramine hydrochloride.
(h) [Reserved]
(i) Phenindamine tartrate.
(j) Pheniramine maleate.
(k) Pyrilamine maleate.
(l) Thonzylamine hydrochloride.
(m) Triprolidine hydrochloride.

9. Section 341.72 is added to subpart C to read as follows:

§ 341.72 Labeling of antihistamine drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antihistamine."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in paragraph (b) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "Temporarily" (select one of the following: "relieves," "alleviates," "decreases," "reduces," or "dries") "runny nose and" (select one of the following: "relieves," "alleviates," "decreases," or "reduces") "sneezing, itching of the nose or throat, and itchy, watery eyes due to hay fever" (which may be followed by one or both of the following: "or other upper respiratory allergies" or "(allergic rhinitis)").

(2) "For the temporary relief of runny nose, sneezing, itching of the nose or throat, and itchy, watery eyes due to hay fever" (which may be followed by one or both of the following: "or other upper respiratory allergies" or "(allergic rhinitis)").

(c) *Warnings.* The labeling of the product contains the following warnings, under the heading "Warnings":

(1) "May cause excitability especially in children."

(2) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(3) *For products containing brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12(a), (b), (c), (d), (e), (i), (j), (k), (l), and (m).* "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor.

Use caution when driving a motor vehicle or operating machinery."

(4) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

(5) *For products containing phenindamine tartrate identified in § 341.12(i).* "May cause nervousness and insomnia in some individuals."

(6) *For products that are labeled only for use by children under 12 years of age.* The labeling of the product contains only the warnings identified in paragraphs (c)(1) and (c)(5) of this section as well as the following:

(i) "Do not give this product to children who have a breathing problem such as chronic bronchitis, or who have glaucoma, without first consulting the child's doctor."

(ii) *For products containing brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12(a), (c), (d), (e), (i), (j), (k), (l), and (m).* "May cause drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(iii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride or identified in § 341.12(f) and (g).* "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing brompheniramine maleate identified in § 341.12(a).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(2) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 6 to 8 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 12 years of age: consult a doctor.

(3) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(4) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(5) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(6) *For products containing diphenhydramine citrate identified in § 341.12(f).* Adults and children 12 years of age and over: oral dosage is 38 to 76 milligrams every 4 to 6 hours, not to exceed 456 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 to 38 milligrams every 4 to 6 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(7) *For products containing diphenhydramine hydrochloride identified in § 341.12(g).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(8) [Reserved]

(9) *For products containing phenindamine tartrate identified in § 341.12(i).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(10) *For products containing pheniramine maleate identified in § 341.12(j).* Adults and children 12 years of age and over: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 6.25 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(11) *For products containing pyrilamine maleate identified in § 341.12(k).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 6 to 8 hours, not to exceed 200 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 6 to 8 hours, not to exceed 100 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(12) *For products containing thonzylamine hydrochloride identified in § 341.12(l).* Adults and children 12 years of age and over: oral dosage is 50 to 100 milligrams every 4 to 6 hours, not to exceed 600 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(13) *For products containing triprolidine hydrochloride identified in § 341.12(m).* Adults and children 12 years of age and over: oral dosage is 2.5 milligrams every 4 to 6 hours, not to exceed 10 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1.25 milligrams every 4 to 6 hours, not to exceed 5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any

of the labeling statements in this section.

10. Section 341.90 is amended by adding paragraphs (e) through (q) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(e) *For products containing brompheniramine maleate identified in § 341.12(a).* Children 2 to under 6 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours.

(f) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 37.5 milligrams in 24 hours. Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 6 to 8 hours, not to exceed 18.75 milligrams in 24 hours.

(g) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Children 2 to under 6 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours.

(h) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Children 2 to under 6 years of age: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(i) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Children 2 to under 6 years: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(j) *For products containing diphenhydramine citrate identified in § 341.12(f).* Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 to 6 hours, not to exceed 57 milligrams in 24 hours.

(k) *For products containing diphenhydramine hydrochloride identified in § 341.12(g).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 mg in 24 hours.

(l) [Reserved]

(m) *For products containing phenindamine tartrate identified in § 341.12(i).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(n) *For products containing pheniramine maleate identified in § 341.12(j).* Children 2 to under 6 years of age: oral dosage is 3.125 to 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(o) *For products containing pyrilamine maleate identified in § 341.12(k).* Children 2 to under 6 years of age: oral dosage is 6.25 to 12.5 milligrams every 6 to 8 hours, not to exceed 50 milligrams in 24 hours.

(p) *For products containing thonzylamine hydrochloride identified in § 341.12(l).* Children 2 to under 6 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours.

(q) *For products containing triprolidine hydrochloride identified in § 341.12(m).* Children 4 to under 6 years of age: oral dosage is 0.938 milligram every 4 to 6 hours, not to exceed 3.744 milligrams in 24 hours. Children 2 to under 4 years of age: oral dosage is 0.625 milligram every 4 to 6 hours, not to exceed 2.5 milligrams in 24 hours. Infants 4 months to under 2 years of age: oral dosage is 0.313 milligram every 4 to 6 hours, not to exceed 1.252 milligrams in 24 hours.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

11. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371).

§ 369.20 [Amended]

13. Section 369.20 *Drugs; recommended warning and caution statements* is amended by revising the introductory text of the entry for "ANTIHISTAMINICS, ORAL" to read: ANTIHISTAMINICS, ORAL. (See also § 310.201(a)(4) and (a)(24) of this chapter.)

* * * * *

§ 369.21 [Amended]

13. Section 369.21 *Drugs; warning and caution statements required by regulations* is amended by revising the introductory text of the entry for "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, AND CHLORCYCLIZINE HYDROCHLORIDE PREPARATIONS)" to read: "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, DOXYLAMINE SUCCINATE, AND CHLOROTHEN CITRATE PREPARATIONS). (See § 310.201(a)(4), (a)(13), and (a)(24) of this chapter.)," and by removing the warning statement for chlorcyclizine-containing preparations.

Dated: August 5, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-29718 Filed 12-8-92, 8:45 am]

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Wednesday
December 9, 1992

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to Monograph for OTC Antitussive Drug Products

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89P-0040]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Proposed Amendment to Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. OTC antitussive drug products are used to relieve cough. This proposal addresses only single-ingredient antitussive drug products containing one of these ingredients. In a future issue of the **Federal Register**, the agency will propose to amend the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to address combination cough-cold drug products containing diphenhydramine citrate or diphenhydramine hydrochloride. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by February 8, 1993; written comments on the agency's economic impact determination by February 8, 1993.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products in Part 341 (21 CFR Part 341) that lists in § 341.14 (21 CFR 341.14) the active ingredients that are generally recognized as safe and effective for use in these products. Diphenhydramine citrate and diphenhydramine hydrochloride were not included in § 341.14 at that time. Subsequently, two manufacturers petitioned the agency to amend the final monograph for OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride as monograph active ingredients (Refs. 1 and 2).

In the advance notice of proposed rulemaking published in the **Federal Register** of September 9, 1976 (41 FR 38312 at 38340 to 38342), the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) classified diphenhydramine hydrochloride in Category I (generally recognized as safe and effective and not misbranded) for OTC antitussive use. However, FDA deferred a decision on the Panel's recommendation to place this ingredient in Category I for antitussive use (41 FR 38313). Subsequently, the agency announced in the **Federal Register** of November 30, 1976 (41 FR 52536), that the Commissioner did not accept the Panel's recommendation that diphenhydramine hydrochloride be classified in Category I for OTC use. The Commissioner concluded that the recommended antitussive dose of diphenhydramine hydrochloride (25 milligrams (mg)) causes an unacceptable level of drowsiness for OTC use, even with a warning statement in the labeling as recommended by the Panel. Furthermore, although agreeing with the Panel that some data indicated that this ingredient has an antitussive effect, the Commissioner found a lack of substantial evidence consisting of adequate and well-controlled studies, as required by § 314.126 (21 FR 314.126), formerly § 314.111(a)(5)(ii) (21 CFR 314.111(a)(5)(ii)), on which to base a determination of the effectiveness of diphenhydramine hydrochloride as an antitussive.

In the **Federal Register** of August 31, 1979 (44 FR 51512), FDA published a final decision on the issues that had been presented in a formal evidentiary public hearing concerning a supplemental new drug application (NDA) for diphenhydramine hydrochloride as an antitussive. In this final decision, the Commissioner extensively reviewed the safety and effectiveness data submitted by the manufacturer and considered diphenhydramine hydrochloride's safety and effectiveness as an OTC antitussive. The Commissioner stated that studies to demonstrate the effectiveness of an antitussive either must be done in the target population, i.e., subjects with acute upper respiratory infections, or, if studies are done in a population other than the target population, such as with subjects with chronic cough, the mechanism of action must be shown to act specifically on the cough center of the brain. The Commissioner also stated that induced cough studies are not a substitute for adequate and well-controlled studies in the target population and determined that the available data did not show that diphenhydramine hydrochloride was effective as an antitussive by the above criteria. With regard to the safety of diphenhydramine hydrochloride, the Commissioner stated:

> I believe that, if [diphenhydramine hydrochloride] were shown to be an effective antitussive drug, it might be possible to devise labeling that would provide adequate warnings of the risk of drowsiness and other ill effects and that, coupled with child resistant packaging, would enable the product to be safely used as an OTC drug. In devising any such labeling [it would be necessary] to consider inclusion of approved labeling for prescription [drug products containing diphenhydramine hydrochloride] as well as that recommended by the * * * Panel [footnote omitted]. The risk to patients from a drug that causes drowsiness is indirect. The drowsiness itself does not cause harm. It is only when the patient tries to undertake a task that requires alertness such as driving a car, that the drug's sedative qualities pose a risk to the patient and to other members of the public. Suitable labeling of an OTC drug may provide sufficient safeguards for a drug that presents such indirect risks. When a drug presents serious direct risks (e.g., of cancer or other serious disease), adequate labeling for any lay use without medical supervision generally cannot be written (44 FR 51512 at 51524 and 51525).

In response to the agency's final decision concerning diphenhydramine hydrochloride as an antitussive, new data on the mechanism of action of diphenhydramine hydrochloride were submitted to the agency under a NDA. These data consisted of unpublished studies that were considered to be confidential information under 21 CFR 20.61 and, thus, were not publicly available. Based on the agency's review of the unpublished studies, it approved a supplemental NDA for diphenhydramine hydrochloride for OTC antitussive use. However, in the tentative final monograph for OTC antitussive drug products published in the **Federal Register** of October 19, 1983 (48 FR 48576 at 48581 to 48583), the agency classified diphenhydramine hydrochloride in Category III because there was not adequate information publicly available at that time to

demonstrate that the drug is generally recognized as effective.

References

(1) Comment No. CP2, Docket No. 89P-0040, Dockets Management Branch.
(2) Comment No. CP3, Docket No. 89P-0040, Dockets Management Branch.

II. The Agency's Conclusions on the Petitions

1. One company stated in its petition (Ref. 1) that it currently markets diphenhydramine hydrochloride as an OTC antitussive drug product under an approved supplemental NDA and requested that diphenhydramine be included in the monograph for OTC antitussive drug products. The company stated that diphenhydramine hydrochloride was not included in the final monograph because the data upon which the agency's approval of the supplemental NDA was based were not then publicly available. The company's petition now included these data, consisting of unpublished studies that demonstrate a central mechanism of action for diphenhydramine hydrochloride as an antitussive. In its petition, the company formally requested that the previously confidential efficacy studies referenced by FDA in the tentative final monograph for OTC antitussive drug products (48 FR 48576 at 48582) be made part of the rulemaking procedure and waived any further claim of privilege and confidentiality with respect to these studies (Ref. 1).

Another company (Ref. 2) requested that FDA amend the final monograph for OTC antitussive drug products to include diphenhydramine citrate based on the safety and effectiveness studies submitted for diphenhydramine hydrochloride. The comment noted that, in the final rule for OTC nighttime sleep-aid drug products (February 14, 1989, 54 FR 6814 at 6824), the agency stated that the citrate salt of diphenhydramine could be considered identical to the hydrochloride salt.

The agency agrees with the petitions and is proposing to amend the antitussive final monograph to include diphenhydramine citrate and diphenhydramine hydrochloride as active ingredients. The agency has evaluated the data submitted by one company (Ref. 1) and agrees that they are the same data that were included in the supplemental NDA approved by the agency. The agency previously determined that diphenhydramine citrate is bioequivalent to and therapeutically equivalent to diphenhydramine hydrochloride. In the final rule for OTC nighttime sleep-aid drug products (54 FR 6814 at 6823 and 6824), the agency concluded that the citrate salt could be considered identical to the hydrochloride salt because the citrate salt is rapidly converted in the stomach to the hydrochloride salt. The agency determined that a dose of 76 mg diphenhydramine citrate is necessary to supply a diphenhydramine content equivalent to 50 mg diphenhydramine hydrochloride. Accordingly, the agency is proposing to amend the final monograph on OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride in § 341.14(d)(5) and (d)(6).

References

(1) Comment No. CP2, Docket No. 89P-0040, Dockets Management Branch.
(2) Comment No. CP3, Docket No. 89P-0040, Dockets Management Branch.

2. Both petitions requested that the following warnings for antitussive products containing diphenhydramine be added to § 341.74(c) (21 CFR 341.74) of the antitussive monograph: (1) "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the sedative effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting a doctor. Use caution when driving a motor vehicle or operating machinery," (2) "May cause excitability especially in children," and (3) "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor." The petitioners mentioned that these warning were proposed for diphenhydramine in the antihistamine tentative final monograph (January 15, 1985, 50 FR 2200 at 2216).

The agency agrees with the petitions that the same warnings that are required for the diphenhydramine salts in the antihistamine monograph should be required for these ingredients in the antitussive monograph. For clarity, the agency revised some of the above warnings for OTC antihistamine drug products in final monograph for these drug products, published elsewhere in this issue of the **Federal Register**. In addition, the agency notes that both the antitussive and antihistamine monographs include warnings for drug products labeled for use only by children under 12 years of age. Because antitussive drug products can be marketed with labeling for use only by children under 12 years of age and the antitussive monograph already provides specific labeling for such products, specific warnings for antitussive products containing diphenhydramine labeled for use only in this age group are being proposed in this monograph amendment. Therefore, the agency is proposing warnings in § 341.74(c)(4)(v) through (c)(4)(vii)(*b*) for OTC antitussive drug products containing diphenhydramine citrate or diphenhydramine hydrochloride.

In a future issue of the **Federal Register**, the agency will be proposing to revise the warnings that appear in § 338.50(c)(3) (21 CFR 338.50(c)(3)) that are required for products containing diphenhydramine citrate or diphenhydramine hydrochloride used as an OTC nighttime sleep-aid. The warnings will be made consistent with those proposed in § 341.74(c)(4)(vii)(a) of this document and § 341.72(c)(2) of the final monograph for OTC antihistamine drug products (21 CFR 341.72(c)(2)). Also, in a future issue of the **Federal Register**, the agency will be proposing to revise the warnings that appear in § 336.50(c)(1) that are required for products containing diphenhydramine and other ingredients listed in § 336.10 for OTC antiemetic use. The warnings also will be made consistent with those proposed in § 341.74(c)(4)(vii)(a) of this document and § 341.72(c)(2).

3. One petition requested the following directions for diphenhydramine hydrochloride as an antitussive: "Adults: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor." Another comment requested the following directions for diphenhydramine citrate as an antitussive: "Adults: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours except as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours except as directed by a doctor. Children under 6 years of age: consult a doctor."

In its advance notice of proposed rulemaking for OTC cough-cold drug products (41 FR 38312 at 38341), the Panel recommended the same dosages as requested by the petition. The currently approved NDA labeling for diphenhydramine hydrochloride-containing antitussive drug products (Ref. 3) includes the following directions: "Adults (12 years and older): Take 25 mg every 4 hours. Do not

exceed 150 mg in 24 hours. Children (6–12 years): Take 12.5 mg every 4 hours. Do not exceed 75 mg in 24 hours."

Based on the Panel's recommended dosages and the approved NDA labeling, the agency is proposing the following directions for OTC antitussive drug products containing diphenhydramine hydrochloride: "Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor." This format is consistent with the wording for the directions of other ingredients in the antitussive monograph.

The agency is also proposing the following directions for OTC antitussive drug products containing diphenhydramine citrate: "Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor." These dosages are equivalent to the above dosages for diphenhydramine hydrochloride.

In the advance notice of proposed rulemaking for OTC cough-cold drug products (41 FR 38312 at 38341), the Panel provided professional labeling for diphenhydramine hydrochloride for OTC antitussive use. The Panel recommended that such labeling (but not that provided to the general public) may contain the following additional dosage information: Children 2 to under 6 years oral dosage is 6.25 milligrams every 4 hours, not to exceed 37.5 milligrams in 24 hours. This type of information is included in § 341.90 (21 CFR 341.90) of the professional labeling of the cough-cold monograph. Accordingly, the agency is proposing the dosage information for children 2 to under 6 years of age in § 341.90(r) and (s), respectively, of the professional labeling.

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance 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 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 rule at the earliest possible date.

The agency has approved a number of NDA's and abbreviated NDA's (ANDA's) that currently allow for the OTC marketing of single-entity drug products containing diphenhydramine hydrochloride for antitussive use. Thus, FDA does not believe it is necessary to prohibit OTC marketing of new single-entity drug products containing diphenhydramine hydrochloride or diphenhydramine citrate for antitussive use while public comment to the proposed monograph status of these ingredients are being evaluated. OTC marketing may be initiated subject to the terms and conditions of the final monograph for OTC antitussive drug products (21 CFR Part 341) and the terms and conditions of this proposed monograph amendment. Such products marketed at this time are subject to the enforcement policy in § 330.13 (21 CFR 330.13). That policy provides that FDA may, by notice in the **Federal Register**, permit interim marketing before the issuance of a final monograph, subject to the risk that the agency may, in the final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. At this time, FDA is allowing single-entity products containing diphenhydramine hydrochloride or diphenhydramine citrate for antitussive use to be marketed pursuant to this proposal provided the product is labeled in accord with § 341.74 and the labeling proposed in this notice. Marketing of such products with labeling not in accord with § 341.74 and the labeling proposed in this notice also may result in regulatory action against the product, the marketer, or both.

This proposal does not address combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride. These matters will be addressed in a future issue of the **Federal Register**. In the tentative final monograph for OTC cough-cold combination drug products (August 12, 1988, 53 FR 30522 at 30556 and 30557), the agency classified the following combination drug products in Category III and said that such products can not be marketed at this time: (1) Combinations containing an antihistamine (such as diphenhydramine citrate or diphenhydramine hydrochloride that is also a Category I antitussive) with an antitussive, (2) combinations containing an antitussive (such as diphenhydramine citrate or diphenhydramine hydrochloride that is also an antihistamine) with an antihistamine, (3) combinations containing an antitussive (such as diphenhydramine citrate or diphenhydramine hydrochloride) with an expectorant (if labeled for productive cough), and (4) combinations containing an antitussive (such as diphenhydramine citrate or diphenhydramine hydrochloride) with an expectorant and an oral nasal decongestant (if labeled for productive cough). Until the agency amends the tentative final monograph for OTC cough-cold combination drug products, no cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can be marketed OTC unless it is the subject of an approved NDA or ANDA.

The agency has examined the economic consequences of this proposed rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking amending the final monograph for OTC antitussive drug products is not expected to pose such an impact on small businesses. This proposed rule would allow OTC antitussive drug products containing diphenhydramine citrate or diphenhydramine hydrochloride as a single active ingredient to be marketed without having to obtain an approved NDA, as is currently required. This will be beneficial to small manufacturers. Therefore, the agency certifies that this

proposed rule will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before February 8, 1993, submit written comments or objections to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before February 8, 1993. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections 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. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

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 341 be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 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 341.14 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 341.14 Antitussive active ingredients.

* * * * *

(a) * * *

(5) Diphenhydramine citrate.

(6) Diphenhydramine hydrochloride.

* * * * *

3. Section 341.74 is amended by adding new paragraphs (c)(4)(v), (c)(4)(vi), (c)(4)(vii) ,(d)(1)(iv) and (d)(1)(v), to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(v) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6).* "May cause excitability especially in children."

(vi) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled only for children under 12 years of age*—(*a*) "Do not give this product to children who have a breathing problem such as chronic bronchitis, or who have glaucoma, without first consulting the child's doctor."

(b) "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(vii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled for use in adults and children under 12 years of age*—(*a*) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of prostate gland."

(*b*) "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

* * * * *

(d) * * *

(1) * * *

(iv) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(v) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

* * * * *

4. Section 341.90 is amended by adding new paragraphs (r) and (s) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(r) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 hours, not to exceed 57 milligrams in 24 hours.

(s) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 hours, not to exceed 37.5 milligrams in 24 hours.

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–29719 Filed 12–8–92; 8:45 am]

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Federal Register

Wednesday
December 9, 1992

Part VI

Environmental Protection Agency

40 CFR Part 180

Zineb; Revocation of Tolerances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300268; FRL-4168-4]

RIN 2070-AB78

Zineb; Revocation of Pesticide Tolerances and Its Effect on Imported Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes expiration dates for the revocation of all zineb tolerances for residues in or on agricultural commodities. All U.S. registrations for ethylene bisdithiocarbamate (EBDC) pesticide products containing zineb have been cancelled. Zineb tolerances for residues in or on all agricultural commodities (except grapes for wine use) will expire on December 31, 1994. The zineb tolerance for grapes designated for wine use will expire on December 31, 1997; however, the wine grape tolerance only applies to grapes grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier.

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300268], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David H. Chen, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, W31F3, Third Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8017.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-3187 or call 202-512-1530 for disks or paper copies. The file is available in Postscript, Wordperfect 5.1, and ASCII.

I. Introduction

Zineb is an EBDC fungicide that has been manufactured and used on agricultural commodities since the early 1950s. By the mid-1980s, most of zineb's share of the domestic market was replaced by other EBDCs. In 1988, under section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA suspended all zineb product uses because of the failure of an end-use formulator to supply data under the 1987 EBDC Comprehensive Data Call-In. Subsequently, this end-use formulator informed EPA that it would voluntarily cancel its zineb registrations. Between 1989 and 1990, EPA accepted a number of voluntary cancellation requests from affected zineb registrants. Because no one committed to support zineb, in 1991 EPA cancelled all remaining registrations. This document establishes expiration dates for the revocation of all tolerances of zineb under the Federal Food, Drug and Cosmetic Act (FFDCA).

II. Legal And Regulatory Background

In the **Federal Register** of July 17, 1987 (52 FR 27172), EPA initiated a second Special Review for the EBDCs (maneb, mancozeb, metiram, nabam, and zineb). This action was prompted by EPA's concern over ethylenethiourea (ETU), a metabolite, contaminant and degradation product of the EBDCs, which the Agency has classified as a B2 carcinogen. In the **Federal Register** of December 20, 1989 (54 FR 52158), the Agency issued a notice of Preliminary Determination to Cancel Certain Registrations of the EBDCs. In that notice, the Agency proposed to cancel all but 10 food uses of maneb, mancozeb, and metiram. In the **Federal Register** of May 16, 1990 (55 FR 20416), EPA proposed to reduce and/or revoke certain food tolerances for residues of maneb, mancozeb, metiram, and zineb fungicides in or on agricultural commodities and processed foods under sections 408 and 409 of the FFDCA (21 U.S.C. 346a and 348). The proposed tolerance action was prompted by EPA's intent to cancel most maneb, mancozeb, and metiram uses, and also on the belief that all zineb registrations under FIFRA had been cancelled or that cancellation was imminent. For a description of EPA's cancellation effort, see the **Federal Register** notices of December 4, 1989 (54 FR 50020) and March 6, 1990 (55 FR 7935).

Originally, EPA proposed to revoke all zineb tolerances by October 1990. This proposal was predicated on EPA's belief that all zineb registrations had been cancelled. In fact, EPA did not receive cancellation requests from all zineb registrants in 1989 and 1990. In the **Federal Register** of July 31, 1990 (55 FR 31164), the Agency provided one additional opportunity for an individual or individuals to support a new zineb registration under the 1988 FIFRA amendments. As no one came forward to support zineb, in January 1991 EPA cancelled all remaining registrations. EPA received comments on the proposed revocation concerning international trade, import, and channels-of-trade issues. The dates of the final cancellations and the comments on channels-of-trade issues caused the Agency to delay final expiration dates for the zineb tolerances (see Units IV. and V. of this preamble).

In the **Federal Register** of March 2, 1992 (57 FR 7484), the Agency issued the EBDC Final Determination and concluded the Special Review for the remaining EBDC fungicides—maneb, mancozeb, and metiram. The Agency will publish a separate notice dealing with these EBDC tolerances.

III. Zineb Tolerances Subject To Revocation

The following zineb tolerances are found in 40 CFR 180.115 and are set in or on commodities in parts per million (ppm):

Commodity	Parts per million
Corn (grain)	0.1
Wheat	1
Apples	2
Cucumber, melons, squash, and tomatoes	4
Celery and corn (sweet K + CWHR)	5
Apricots, beans, beets (garden roots only), blackberries, boysenberries, broccoli, Brussel sprouts, cabbage, carrots, cauliflower, cherries, citrus fruits, cranberries, currants, dewberries, eggplants, gooseberries, grapes, guavas, kohlrabi, loganberries, mushrooms, nectarines, onions, parsley, peaches, peanuts, pears, peas, peppers, plums (fresh prunes), pumpkins, quinces, radishes (with or without tops) or radishes (tops), raspberries, rutabagas (with or without tops), rutabagas (tops), salsify, strawberries, squash (summer), turnips (with or without tops) or turnips (greens), youngberries	7
Endive (escarole), kale, lettuce, mustard greens, and spinach	10
Beets (tops), Chinese cabbage, collards, roamine, and Swiss chard	25
Hops	60

In addition, there is one interim zineb tolerance set at 0.5 ppm in or on potatoes (used for seed piece treatment) listed in 40 CFR 180.319. This tolerance for potatoes also is subject to the tolerance revocation.

IV. Issues Relating To The Revocation Of Zineb Tolerances

A. Domestic Zineb Uses

As noted earlier, by 1991 all former zineb registrations had been terminated. Under the January 1991 cancellation orders, the affected registrants could ship existing stocks for 1 year after the

date of the cancellation order, unless their registrations were subject to an earlier cancellation. It was possible for one or more of the zineb registrants (not subject to an earlier cancellation) to legally sell and distribute their zineb products until January 1992. Any zineb products that could have been legally sold to end-users could be used until stocks were exhausted. The Agency believes that these stocks are minimal and will be depleted by the end of the 1992 growing season.

In the proposed EBDC tolerance revocation **Federal Register** document, EPA estimated October 1990 as the final cancellation date for zineb products, and as the proposed revocation date for zineb tolerances. As noted above, the final zineb cancellations did not occur until January 1991, and use under existing-stocks provisions was allowed for 1 year. EPA estimates it will require about 2 years for zineb-treated commodities to clear the market. Accordingly, EPA has moved the tolerance revocation date for all commodities (except grapes for wine use) to December 31, 1994. To accommodate the longer shelf-life of bottled wines and the longer wine-processing time required before bottling and shipment, the tolerance expiration date for grapes designated for wine use is December 31, 1997. Finally, to ensure that the extended tolerance expiration date for grapes does not encourage the indefinite use of zineb on grapes designated for the manufacture of wines, the grape tolerance extension from January 1, 1995 to December 31, 1997 will apply to wine grapes grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier.

B. Import Commodities Treated With Zineb

Despite the cancellation of all U.S. registrations, the Agency understands that zineb continues to be manufactured and applied to sites internationally. With the exception of certain imported wines, the economic impact associated with the loss of zineb use on imported commodities such as citrus, cucurbits, tomatoes, or pineapples is not likely to be significant in terms of market prices in the U.S. If required, the Agency believes that U.S. importers could readily find alternate, zineb-free sources of these commodities. Moreover, the Agency notes that growers in exporting countries have several available alternatives to zineb. Therefore, the revocation dates set forth in this rule should have a negligible impact on the price and the availability of raw agricultural commodities and processed foods imported into the U.S.

In the absence of zineb tolerances, any agricultural commodity or processed food imported into the U.S. found to contain EBDC residues that are traceable to a previous zineb use would be a violation of the FFDCA.

C. Imported Wines

Imported wines are a major food commodity valued at about $1 billion per year in the U.S. This wine represents about 15 percent of total U.S. wine consumption. In 1989, French and Italian wines combined accounted for more than 10 percent of the total U.S. wine consumed. Zineb, as well as other EBDC fungicides, are used on wine grapes grown outside the U.S. The Agency does not have precise information on the volumes of imported wine that were made from grapes treated with zineb; however, based on EPA estimates, it is likely that an immediate revocation of zineb tolerance for grapes may have a significant impact on the existing supplies and contracted purchases of both wine importers and domestic consumers of imported wines. Additionally, unlike zineb residues on other agricultural commodities, zineb residues in wine may not clear the channels-of-trade until 5 years from the use of zineb on wine grapes. This is attributable to the longer shelf-life of bottled wine and the longer wine processing time required prior to bottling and shipment.

All grapes and grape products (including wine) will be covered by the zineb tolerance for grapes, from the effective date of this rule until December 31, 1994. In addition, to minimize the potential economic impact on U.S. wine importers, related businesses and consumers, EPA will extend the expiration date of the tolerance on grapes until December 31, 1997, with two restrictions. The two restrictions on the grape tolerance for the period between January 1, 1995 and December 31, 1997 are: the tolerance applies only to grapes grown for wine use, and the grapes must have been grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier. In this interim period and until the extended tolerance for grapes expires in 1997, the levels of zineb residues in bottled wines are not expected to pose significant health risks to the average consumer.

V. Comments On The Proposed Tolerance Revocation

The Agency received more than 100 responses to the EBDC tolerance revocation proposed rule. Many comments dealt with the likely impacts as a consequence of the potential loss of the EBDCs, or more specifically, of maneb, mancozeb, and metiram. Responses to these comments will not be addressed here. Only comments that were related to the revocation of zineb tolerances are addressed below:

A. Existing stocks

Comments: One grower was unaware of the proposed tolerance action on zineb and had already applied a zineb product to his crops during the 1990 growing season. This grower requested that the tolerance action be deferred to March 1991. In another comment, a registrant asked if the manner by which he had handled existing stocks after a labeling change fully complied with the law, and the timing of the Agency's final tolerance revocation action.

Response: The Agency reviewed the question of existing stocks as it affects the timing of the tolerance action and in establishing the tolerance expiration dates. As stated above, the Agency believes that its final decision on the selection of the tolerance revocation dates established by this rule will provide an adequate time period for legally applied zineb residues to clear the market.

B. Generalized System of Preferences

Comments: Several foreign governments, particularly Chile and Colombia, voiced concerns that the revocation of EBDC tolerances may seriously affect several key export commodities from their countries. The Colombian government stated that this action would be contrary to the intent of the U.S. Generalized System of Preferences (GSP). It stated that over the short term, the GSP was intended to provide preferential access of certain products under a duty-free arrangement to help improve trade competitiveness of countries in the Andean region on the world market.

Response: Adequate alternative fungicides to zineb are available for most of the commodities of concern (mainly tropical fruits and vegetables) including the remaining EBDC fungicides maneb, mancozeb, and metiram. Thus, the Agency anticipates minimal impacts to the Andean region.

C. International trading

Comments: A number of foreign organizations and governments, including the European Community and its member states, commented that for certain food uses of the EBDCs the revocation of tolerances may cause substantial economic losses to both their growers and the U.S. consumers.

Several foreign embassies voiced similar concerns that revoking certain major EBDC tolerances could have serious economic impacts from banned shipments and restricted importation of various commodities treated with these fungicides. Other comments suggested that many fruits and vegetables, bottled wines, and other processed foods exported to the U.S. could be affected.

Response: The Agency was not provided zineb use data in these comments to evaluate the level of impact to foreign growers and U.S. consumers for every former zineb site. However, the Agency recognizes that zineb use on wine grapes may be occurring in some regions of the world and has taken this into consideration. To minimize the potential economic impact in the U.S., the Agency will not revoke the tolerance for grapes for wine use until the 1997 expiration date (see Unit IV. of this preamble). In addition, EPA will be distributing an international notice announcing this action to health and agricultural officials around the world. The notice will instruct foreign producers of food for the U.S. market of EPA's decision to revoke tolerances for zineb.

VI. Conclusions

EPA cancelled all remaining zineb registrations in the U.S. in 1991. Because tolerances are generally not required for cancelled uses, the Agency is now establishing expiration dates for the revocation of zineb tolerances. The expiration dates in this Order have been adjusted to take into account the final cancellation and legal use dates of zineb products, as well as response to comments. The Agency believes that the share of zineb-attributable ETU residues in agricultural commodities and processed foods is already at low levels. Overall, these residues are not expected to add significantly to any health risks posed to the average consumer until the tolerances expire in the next several years.

VII. Other Regulatory Requirements

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A. Executive Order 12291

As stated in the proposed rule, the Agency has determined that this regulation is not a major regulatory action under the terms of Executive Order 12291. The revocation of zineb tolerances will not cause a major increase in prices, nor will the revocation have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. This rule has been reviewed by the Office of Management and Budget per section 3 of this Order.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and has been determined not to have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The Agency has concluded that these tolerance revocations should have little or no economic impact at any level of business enterprise.

C. Paperwork Reduction Act

As stated in the proposed rule, this action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (section 408(m) of the FFDCA) (21 U.S.C. 346a(m)).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By revising § 180.115, to read as follows:

§ 180.115 Zineb; tolerances for residues.

Tolerances for residues of the fungicide zineb (zinc ethylene bisdithiocarbamate) in or on raw agricultural commodities are established as follows:

Commodity	Parts per million	Expiration date
Apples	2	December 31, 1994
Apricots	7	Do.
Beans	7	Do.
Beets, tops	25	Do.
Beets (garden roots only).	7	Do.
Blackberries	7	Do.
Boysenberries	7	Do.
Broccoli	7	Do.
Brussels sprouts	7	Do.
Cabbage	7	Do.
Carrots	7	Do.
Cauliflower	7	Do.
Celery	5	Do.
Cherries	7	Do.
Chinese cabbage	25	Do.
Citrus fruits	7	Do.
Collards	25	Do.
Corn, grain	0.1	Do.
Corn, sweet K+CWHR	5	Do.
Cranberries	7	Do.
Cucumbers	4	Do.
Currants	7	Do.
Dewberries	7	Do.
Eggplants	7	Do.
Endive (escarole)	10	Do.
Gooseberries	7	Do.
Grapes (all except for wine use).	7	Do.
Grapes (wine use only)[1]	7	December 31, 1997
Guavas	7	December 31, 1994
Hops	60	Do.
Kale	10	Do.
Kohlrabi	7	Do.
Lettuce	10	Do.
Loganberries	7	Do.
Melons	4	Do.
Mushrooms	7	Do.
Mustard greens	10	Do.
Nectarines	7	Do.
Onions	7	Do.
Parsley	7	Do.
Peaches	7	Do.
Peanuts	7	Do.
Pears	7	Do.
Peas	7	Do.
Peppers	7	Do.
Plums (fresh prunes)	7	Do.
Pumpkins	7	Do.
Quinces	7	Do.
Radishes (with or without tops).	7	Do.

Commodity	Parts per million	Expiration date
Radishes, tops	7	Do.
Raspberries	7	Do.
Romaine	25	Do.
Rutabagas (with or without tops).	7	Do.
Rutabagas, tops	7	Do.
Salsify	7	Do.
Spinach	10	Do
Squash, summer	4	Do.
Strawberries	7	Do.
Summer squash	7	Do.
Swiss chard	25	Do.
Tomatoes	4	Do.
Turnips (with or without tops).	7	Do.
Turnips, greens	7	Do.
Wheat	1	Do.
Youngberries	7	Do.

[1] Wine grapes grown for wine vintage years 1992 (Northern Hemisphere), 1993 (Southern Hemisphere), and earlier.

3. By amending § 180.319 in the table therein by revising the entry for zineb, to read as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
*	*	*	*
Zineb (zinc ethylene bisdithiocarbamate)	Do.	0.52[2]	Potatoes (to be used only for seed piece treatment)

[2] Tolerance expires on December 31, 1994 (see 40 CFR 180.115 *Zineb; tolerances for residues).*

[FR Doc. 92-29755 Filed 12-8-92; 8:45 am]

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federal register

Wednesday
December 9, 1992

Part VII

Environmental Protection Agency

Prior Informed Consent Information-Sharing Program; Notice of Participation

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36187; FRL 4080-3]

Prior Informed Consent Information-Sharing Program; Notice of Participation

AGENCY: Environmental Protection Agency (EPA, or the Agency).

ACTION: Notice.

SUMMARY: This notice announces that EPA is participating in an international information-sharing program sponsored by the United Nations (U.N.) called the Prior Informed Consent (PIC) procedures. The EPA has submitted to the U.N. PIC Program two lists of chemicals which are either "banned" or "severely restricted" in the United States. The first, a list of pesticide chemicals, and the second, a list of industrial and consumer chemicals, are available from the Agency. These two lists represent chemicals against which regulatory actions have been taken, to date, that EPA believes meet the criteria established by the U.N. for inclusion under the PIC procedure. EPA's inventory of banned and severely restricted pesticides was transmitted to the U.N. on April 27, 1992. EPA's inventory of banned and severely restricted industrial and consumer chemicals was transmitted to the U.N. on May 27, 1992. The U.N. will now decide whether the candidate chemicals submitted by the EPA will be entered into the international PIC procedures.

ADDRESSES: EPA's submission, as well as background information on the PIC program, is available for inspection in the Office of Pesticide Programs' public docket, Rm. 1103, Crystal Mall #2, 1921 Jefferson-Davis Highway, Arlington, VA. Telephone: (703) 305-5454, as well as in the TSCA Public Docket Office, Office of Pollution Prevention and Toxics, Room NEG004, 401 M St., SW., Washington, DC., under Administrative Record AR071. Telephone: (202) 260-7099.

FOR FURTHER INFORMATION CONTACT: Questions related to industrial and consumer chemicals may be directed, by mail to: Jim Willis, Office of Pollution Prevention and Toxics, TS-778, United States Environmental Protection Agency, Washington, DC 20460. Office location: East Tower, Rm. 415, 401 M St., SW., Washington, DC. Telephone: (202) 260-3489. Fax: (202) 260-8168. For information related to pesticides contact, by mail: Daniel J. Rosenblatt, Office of Pesticide Programs, H7501C, United States Environmental Protection Agency, Washington, DC 20460. Office location: CM #2, Rm. 1115, 1921 Jefferson-Davis Highway, Arlington, VA. Telephone: 703-305-7102. Fax: 703-305-6244.

SUPPLEMENTARY INFORMATION: *Electronic Availability:* This document, and the list of chemicals that EPA has nominated to the U.N. PIC Program is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-152-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII. The list of chemicals is available in Wordperfect 5.1 and ASCII.

The PIC program is designed to promote the safe management of chemicals through the establishment of a communications network among governments on the international trade of pesticides and industrial and consumer chemicals that have been banned or severely restricted in order to protect human health or the environment. PIC is based on the principle that a banned or severely restricted compound should not be exported to a country contrary to the wishes of a competent national authority in the country of destination. Under PIC, importing countries will be provided with a mechanism for indicating whether future shipments of banned or severely restricted compounds will be allowed, restricted, or prohibited. The program is expected to be especially useful for developing countries.

The concept of informed consent was incorporated into two existing international agreements in 1989. These two documents, the "Code of Conduct on the International Trade and Use of Pesticides," and the "London Guidelines on the Exchange of Information on Chemicals in International Trade," were drafted by the U.N. in order to establish an information-sharing procedure among governments and to provide baseline standards and recommendations related to the marketing, packaging, and use of chemical products in international trade.

The United Nations Environment Programme (UNEP) and the Food and Agriculture Organization (FAO) are jointly responsible for the development and administration of the PIC procedure. UNEP has the lead for industrial and consumer chemicals. FAO is chiefly responsible for the portion of the PIC program related to pesticides. UNEP's, International Register of Potentially Toxic Chemicals (IRPTC), is responsible for the actual implementation of the procedures on behalf of both UNEP and FAO.

One of the initial tasks before the U.N. in initiating the PIC procedure was to establish a network of national officials responsible for pesticides and industrial and consumer chemicals. These responsible bodies are known as designated national authorities (DNAs). EPA's Assistant Administrator for Prevention, Pesticides, and Toxic Substances is the DNA for the United States. There are currently 110 countries participating in the procedure, who have identified 146 DNAs.

Based on the criteria established for selection of a compound in the "Code of Conduct" and the "London Guidelines," as well as information available to the U.N. on previous control actions taken with regard to a chemical at the national level, the U.N. has chosen six pesticides for the initial PIC list. These pesticides and their corresponding Chemical Abstract Service (CAS) numbers are listed in the table below.

Pesticide	CAS No.
aldrin	309-00-2
BHC	608-73-1
DDT	50-29-3
dieldrin	60-57-1
dinoseb and its salts	88-85-7, 6365-83-9, 485-31-4, 8048-12-2, 53404-43-6, 35040-03-6, 6420-47-9
fluoroacetamide	640-19-7

DNAs have been provided with chemical fact sheets known as decision guidance documents for each of these pesticides. Each fact sheet describes the chemical and its use patterns, characterizes the effects of exposure, and explains why the compound was chosen to be listed on either the banned or severely restricted list. The fact sheets are designed to assist those countries that are participating in the PIC procedure as an importing nation in determining under what conditions, if any, future shipments of the chemical would be appropriate. EPA's submission of banned and severely restricted pesticides and industrial and consumer chemicals will be used by the U.N. for considering the addition of new compounds to the PIC list. The U.N. has informed EPA that an additional group of compounds will be added to the PIC list in late 1992.

This notice is the first of what EPA envisions will be regular public announcements regarding the PIC procedure. One communication mechanism EPA is considering is the use of the **Federal Register** as a means

for informing the public about decisions of importing countries on specific banned and severely restricted pesticides and industrial chemicals. In that vein, EPA will also ensure that the public docket on PIC is up-to-date. Precise communication mechanisms will be the subject of periodic meetings with industry, environmental groups, and other interested parties.

EPA recognizes that it would be useful to hear the views of outside parties that are expected to participate in the PIC program. Thus, EPA has met and will continue to meet on an informal basis with interested persons. Groups or individuals interested in meeting with Agency representatives should contact the Agency at the addresses provided earlier in this notice. Minutes or records of such meetings will be added to the public docket, as appropriate.

At the conclusion of these informal meetings, EPA also intends to hold a public forum on international notification and the PIC procedures. The purpose of this meeting will be to discuss U.S. involvement--that of government, industry and the public--in the PIC process, as well as the Agency's international notification programs under FIFRA and TSCA. Experience gained from the first-hand implementation of PIC in the upcoming months, as well as information provided to the Agency in the informal meetings described above, will contribute to the development of a final U.S. position on the implementation of PIC. The date and location of the public forum will be published in the **Federal Register**.

Dated: November 24, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-29860 Filed 12-8-92; 8:45 am]

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federal register

Wednesday
December 9, 1992

Part VIII

Office of Management and Budget

Proposed Revisions to Circular A–21; Notice

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revisions to Circular A-21

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to Circular A-21.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions." This revision implements the previously stated intent of OMB to revise Circular A-21.

DATES: Interested parties are invited to comment on these proposed changes. Comments must be in writing and must be received by [30 days from publication].

ADDRESSES: As a convenience to persons interested in providing brief comments (three pages or less), they may be sent via facsimile (fax: 202-395-4915). Comments longer than three pages should be sent to: Office of Management and Budget, 725 17th Street NW, room 10235, Washington, DC 20503.

A copy of the current Circular A-21 may be obtained by calling (202) 395-7332.

FOR FURTHER INFORMATION CONTACT: Jack Sheehan, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget (telephone: 202-395-3993).

SUPPLEMENTARY INFORMATION: The following explains the major changes proposed to Circular A-21:

1. A number of the definitions in the Circular have been clarified to eliminate ambiguity.

2. The cost elements to be included in the major indirect cost pools have been specifically identified to provide greater consistency among university charging practices.

3. More definitive principles are proposed for certain types of costs to promote greater standardization in the treatment of these costs among institutions.

4. General standards for allocating and documenting direct costs involving more than one project have been clarified which should reduce the current uncertainty in this area.

5. Indirect costs are classified into two broad categories: An "Administrative" component and a "Facilities" component. Any costs not identified as "Facilities" as defined in the Circular are to be included in the "Administrative" component and are subject to the existing 26% limitation. Student Services and Administration are also defined as part of "Administration."

6. The proposal makes multi-year "Predetermined Rates" the preferred method for negotiating indirect cost rates.

7. An alternative method for determining the "Administrative" portion of indirect costs is proposed which would reduce the administrative effort currently associated with this area.

8. The proposal would raise the threshold for using the "simplified method" for computing indirect cost rates to $10,000,000. This would allow more institutions to use this method.

9. The standard method for allocating facilities costs would be simplified and made less subjective by eliminating the concept of "predominantly" used space.

10. The capitalization level for equipment would be increased to $5000 or the level specified in each institution's policy, whichever is less. This would make the Circular consistent with the proposed revision of Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

In addition, the existing requirements of J.41.b., that "tuition remission" and other forms of compensation be charged directly to a project when a student is working directly on the project, must be adhered to by all institutions. Any institution not charging such costs directly must convert to a direct charging system on a phased basis so that all awards in place on or subsequent to October 1, 1997, are on a direct charge basis.

The interagency task force that has been reviewing existing practices and policies of university-funded research has recommended continued study of topics that require additional data gathering and evaluation. They include: (i) Establishment of a government-wide data base on indirect costs, (ii) cost of phasing in depreciation (in lieu of use allowances) for capital assets, (iii) standard allocation methods to obviate the need for special studies, (iv) bases of inter-institutional differences in administrative costs, and (v) alternatives to modified total direct cost (e.g., square footage) for use in allocating facilities costs among individual projects.

Many participants and observers of the Circular A-21 rate negotiation process have expressed concern about the divergent approaches to applying certain provisions of the Circular by Federal cognizant agencies. Some have recommended consolidation of cognizance responsibility in a single agency. Others have recommended that OMB continue the current assignment system but provide stronger guidance for and coordination of the cognizant agencies to achieve greater uniformity in their application of Circular A-21.

OMB concurs that changes are in order and will work with the Federal agencies to achieve and maintain uniformity in interpretations of the Circular. To the extent that cognizance might be improved by reassignment of an institution from one agency's cognizance to another's, this will be accomplished during the forthcoming evaluation of OMB Circular A-88, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions."

EXECUTIVE ORDER NO. 12291:

OMB has determined that the proposed revisions to Circular No. A-21 do not qualify as a "major rule" under the criteria in Executive Order No. 12291, "Federal Regulation." The principal effect of the proposed revisions will be to clarify and simplify current requirements. The costs to implement the new revisions are primarily accounting costs for grantees, contractors, and Federal agencies. These new costs, however, are minimal in both absolute and relative amounts, and, in many instances, the revisions should reduce audit and compliance costs.

John B. Arthur,

Assistant Director for Administration.

The following are proposed revisions to sections B, C, D, F, G, H, and J of the Attachment to Circular A-21:

1. Section B.1.b.(2) *University Research* is revised to read as follows:

(2) *University research* means all research and development activities that are separately budgeted or accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, shall be combined with sponsored research under the function of organized research.

2. A new subsection d. is added to section C.4. *Allocable costs* to read as follows:

d. *Allocation and documentation standard.*

(1) *Cost principles.* The recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable under these cost principles.

(2) *Internal controls.* The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(3) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined reasonably, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined reasonably because of the interrelationship of the work involved, then, notwithstanding subsection C.4.b., the costs may be allocated or transferred to benefitted projects on any reasonable basis, consistent with d.(1) and (2).

(4) *Documentation.* Federal requirements for documentation are specified in this Circular, Circular A-110, and specific agency policies on cost transfers. If the institution authorizes the principal investigator or other individual to have primary responsibility, given the requirements of d.(2), for the management of sponsored agreement funds, then the institution's documentation requirements for the actions of those individuals (e.g., signature or initials of the principal investigator or designee or use of a password) will normally be considered sufficient.

3. Section D.1. *Direct costs-General* is revised to read as follows:

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

4. A new section F.1. *Definition of Facilities and Administration* is added to read as follows:

1. *Definition of Facilities and Administration.* Indirect costs are classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operations and maintenance expenses, and library expenses. "Administration" is defined as general administration and general expenses; departmental administration; sponsored projects administration; student administration and services; and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

5. Previously numbered section F.1. *Depreciation and use allowances* is renumbered F.2. and revised to read as follows:

2. *Depreciation and use allowances.*

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J.12.

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation or use allowances on buildings, capital improvements and equipment related to space used jointly by more than one function (as determined by the users of the space) shall be allocated to benefiting functions in proportion to institutionwide salaries and wages applicable to those functions.

(4) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

6. Previously numbered section F.2. *Operation and maintenance expenses* is renumbered F.4. and revised to read as follows:

4. *Operation and maintenance expenses.*

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated in the same manner as described in Section F.2.b. for depreciation and use allowances.

7. A new section F.3. *Interest* is added to read as follows:

3. *Interest.* Interest on debt associated with certain buildings, equipment and capital improvements, as defined in Section J.22.e., shall be classified as an expenditure under the category Facilities. These costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital improvements to which the interest relates.

8. Previously numbered section F.3. *General administration and general expenses* is renumbered F.6. and revised to read as follows:

6. *General administration and general expenses*

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expense of a general character which do not relate solely to any major function of the institution, i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the

General Counsel; the operations of the central administrative management information systems; and, the central administration of health affairs. General administration and general expenses shall not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See section F.7., Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same cost elements as those in section G.2. When an activity included in this indirect cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

9. Previously numbered section F.4. *Departmental administration expenses* is renumbered F.7. and previously numbered subsection b. is renumbered c. and a new subsection b. is added to read as follows:

7. *Departmental administration expenses.*

b. In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. Guidance on the treatment of specific types of costs frequently incurred within academic departments and similar organizational units is provided as follows.

(1) The salaries of technical staff (e.g., laboratory technicians) shall be treated as direct costs. The salaries of administrative and clerical staff shall be treated as indirect costs.

(2) Laboratory supplies (e.g., chemicals), telephone toll charges, animals animal care costs, computer costs, travel costs, and specialized shop costs shall normally be treated as direct costs. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. Office supplies, postage, local telephone costs, memberships, and equipment maintenance and repair costs shall normally be treated as indirect costs.

c. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in (1) shall be allocated to the appropriate functions of the department on the modified total cost basis.

10. Section G.2. *The distribution basis* is revised to read as follows:

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, as well as the portion of each subgrant and subcontract in excess of $25,000 shall be excluded from modified total direct costs. No other items shall be excluded. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool.

11. Section number G.4. *Predetermined fixed rates for indirect costs* is revised to read as follows; a new section G.5. is added; and existing section G.5. is renumbered G.6.

4. *Predetermined rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

5. *Provisional rates for indirect costs.* Where the cognizant agency determines that cost experience and other pertinent facts do not justify the use of predetermined rates, a provisional rate shall be negotiated. This rate would be subject to adjustment either upward or downward after the close of the accounting period on the basis of actual allowable costs incurred.

12. Previously numbered section G.5. *Negotiated fixed rates and carry-forward provisions* is renumbered G.6. and previously numbered section G.6. *Limitation on reimbursement of administrative costs* is renumbered G.7. and revised to read as follows:

7. *Limitation on reimbursement of administrative costs.*

a. Notwithstanding the provisions of G.1.a., the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in section G.2.) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation and/or use allowances, interest costs, operation and maintenance expenses, and fringe benefits costs as provided by sections F.6.a., F.7.a.(3), F.8.a., and F.9.a.) and all other types of expenditures not listed specifically under one of the subcategories of facilities in section F. (Note: The inclusion of Student Administration and Services in the costs subject to the limitation will be applied prospectively to indirect cost rates negotiated after issuance of this revision of Circular A–21.)

13. A new section G.8. is added to read as follows:

8. *Alternative method for administrative costs.*

a. Notwithstanding the provisions of section G.1.a., an institution may elect to claim a fixed allowance for the "Administration" portion of indirect costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as

defined in Section F.1., whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the indirect cost rate nor is further identification or documentation of these costs required (but see subsection c.). Where a negotiated indirect cost agreement includes this alternative, an institution shall make no further charges for the expenditure categories described in Sections F.6., F.7., F.8. and F.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of section G.8.a. may continue to exercise it at the same rate without further identification or documentation of costs, provided that no accounting or cost allocation changes with the effects described in Section G.7.d. have occurred.

c. If an institution elects to accept a threshold rate, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect cost rate, the institution must reconcile its indirect cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in B.1., as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect cost proposals to financial statements and allocating facilities costs.

14. Section H.1. *Simplified method for small institutions* is revised as follows:

1. *General*

a. Where the total direct cost of work covered by this Circular at an institution does not exceed $10,000,000 in a fiscal year, the use of the simplified procedure described in subsection 2., may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

15. Section J.8.f.(4) *Fringe benefits* is revised to read as follows:

f. *Fringe benefits.*

(4) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of institution-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the institution demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees. Fringe benefits shall be treated in the same manner as the salaries and wages of the employees receiving the benefits. The benefits related to salaries and wages treated as direct costs shall also be treated as direct costs; the benefits related to salaries and wages treated as indirect costs shall be treated as indirect costs.

16. Section J.16. *Equipment and other capital expenditures* is revised to read as follows:

a. For purposes of this paragraph, the following definitions apply:

(1) Capital expenditure means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective intransit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(2) Equipment means an article of nonexpendable tangible personal property having a useful life of more than one year, and an acquisition cost which equals the lesser of (a) the capitalization level established by the institution or (b) $5000 per unit.

(3) Capital expenditures for improvements to land or buildings means improvements which materially increase the value or useful life of the asset and which equals the lesser of (a) the capitalization level established by the institution or (b) $50,000.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for improvements to land or buildings are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(3) The unamortized portion of any capital expenditure for equipment or for improvements to land or buildings written off for financial statement purposes as a result of a change in capitalization levels may be recovered by (a) continuing to claim the otherwise allowable use allowances or depreciation charges in accordance with J.12. or (b) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(4) Capital expenditures are unallowable as indirect costs. But see Section J.12. for allowability of depreciation or use allowances on buildings, capital improvements, and equipment. Also see Section J.37. for allowability of rental costs on land, buildings, and equipment.

17. A new subsection g. is added to section J.21. *Insurance and indemnification* to read as follows:

g. Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the number of patient days supported by each project as a percentage of the total number of patient days.

18. Section J.40. *Sabbatical leave costs* is amended to read as follows:

40. *Sabbatical leave costs.* Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Sabbatical leave costs are considered general fringe benefit costs of the institution and shall be allocated as a general pool of costs to all activities of the institution. The allocation shall be based on the salaries and wages of the class of employees receiving the benefits in accordance with the guidelines for allocating fringe benefit costs in J.8.f.(4).

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