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Presidential Documents

Title 3—

The President

Memorandum of April 24, 1997

Delegation to the Secretary of State of the Responsibilities Vested in the President by Section 564 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), as Amended

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the functions vested in the President by section 564 of the Anti-Economic Discrimination Act of 1994 (AEDA) (title V of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, as amended).

Any reference in this memorandum to section 564 of the AEDA shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such section.

The functions delegated by this memorandum may be redelegated as appropriate.

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

William J. Clinton

THE WHITE HOUSE,
Washington, April 24, 1997.

[FR Doc. 97–12067
Filed 5–6–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF00

1997 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1997 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 1997 marketing quota for flue-cured tobacco to be 973.8 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 1997 price support level to be 162.1 cents per pound.

EFFECTIVE DATE: December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Farm Service Agency (FSA), USDA, Room 5726 South Building, P.O. Box 2415, STOP 0514, Washington, DC 20013–2415, telephone 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since FSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary.

On December 16, 1996, the Secretary announced the national marketing quota and the price support level for the 1997 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule also affirms.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) the amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1997 crop of flue-cured tobacco by December 1, 1996. Five such manufacturers were required to submit such a statement for the 1997 crop and the total of their intended purchases for the 1997 crop is 535.5 million pounds. The 3-year average of exports is 343.3 million pounds.

The national marketing quota for the 1996 crop year was 873.6 million pounds (61 FR 37672). Thus, in accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level for use in determining the 1997 marketing quota for flue-cured tobacco is 131.0 million pounds.

As of December 6, 1996, the Flue-Cured Tobacco Cooperative Stabilization Corporation had in its inventory 5.9 million pounds of flue-cured tobacco (excluding pre-1994 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 125.1 million pounds.

The total of the three marketing quota components for the 1997–98 marketing year is 1,003.9 million pounds. In addition, the discretionary authority to reduce the three-component total by 3 percent was used because it was

determined that the 1997–98 supply would be more than ample. Accordingly, the national marketing quota for the marketing year beginning July 1, 1997, for flue-cured tobacco is 973.8 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the useability of the tobacco and increase the net return per pound to the producers. Yields in crop year 1996 were down slightly from the previous 10-year average, but this was a result of production losses due to Hurricane Fran. Accordingly, the national average yield goal for the 1997–98 marketing year will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1997 crop of flue-cured tobacco is determined to be 466,379.31 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1997 crop of flue-cured tobacco of 1,940 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 1997 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 1.115, which is the result of dividing the 1997 national allotment (466,379.31 acres) minus the national reserve (1,940 acres) by the total of allotments established for flue-cured tobacco farms in 1996 (416,530.02 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 1997 crop of flue-cured tobacco is determined to be 0.9272, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,252 pounds).

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1997 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1997 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 1996 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of;

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year for which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A)(I) and (A)(II)) is 2.2 cents per pound. The difference in the cost index from January 1, 1996, to December 31, 1996, is 4.8 cents per pound. Applying these components to the price support formula (2.2 cents per pound, two-thirds weight; 4.8 cents per pound, one-third weight) results in a weighted total of 3.1 cents per pound. As indicated, section 106 of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used this discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1997 crop of flue-cured tobacco will be supported at 162.1 cents per pound, 2.0 cents higher than the 1996 crop.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs-agriculture, Price support programs, Tobacco, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.111 is amended by adding paragraph (e) to read as follows:

§ 723.111 Flue-cured (types 11–14) tobacco.

* * * * *

(e) The 1997 crop national marketing quota is 973.8 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1, 15 U.S.C. 714b and 714c.

4. Section 1464.12 is amended by adding paragraph (e) to read as follows:

§ 1464.12 Flue-cured (types 11–14) tobacco.

* * * * *

(e) The 1997 crop national price support level is 162.1 cents per pound.

Signed at Washington, DC, on April 30, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–11787 Filed 5–6–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 96–093–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Wisconsin from an accredited-free (suspended) State to an accredited-free State. We have determined that Wisconsin meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective May 7, 1997. Consideration will be given only to comments received on or before July 7, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–093–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–093–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727; or e-mail: messey@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as "the regulations"), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term "State" is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program. An accredited-free State is a State that has no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States.

An accredited-free (suspended) State is defined as a State with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State. A State with accredited-free (suspended) status is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

Before publication of this interim rule, Wisconsin was designated in § 77.1 of the regulations as an accredited-free (suspended) State. However, Wisconsin now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Wisconsin from the list of accredited-free (suspended) States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to change the regulations so that they accurately reflect the current tuberculosis status of Wisconsin as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. Wisconsin has approximately 29,000 dairy herds and 22,000 beef herds, for a combined total of 3,859,000 cattle. Approximately 95 percent of herd owners would be considered small businesses. Changing the status of Wisconsin may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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 12988

This rule has been reviewed under Executive Order 12988, 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

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for "Accredited-free (suspended) State", paragraph (2) is amended by removing "Wisconsin" and adding "None" in its place.

3. In § 77.1, in the definition for "Accredited-free state", paragraph (2) is amended by adding "Wisconsin," immediately before "and Wyoming".

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11885 Filed 5–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–034–2]

Change in Disease Status of The Netherlands Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; change in effective date.

SUMMARY: We are changing the effective date of the interim rule that added The Netherlands to the list of countries where bovine spongiform encephalopathy exists. The interim rule first became effective on April 10, 1997, and was published in the **Federal Register** on April 15, 1997 (62 FR 18263).

DATES: The interim rule published in the **Federal Register** on April 15, 1997 (62 FR 18263) is effective March 21, 1997. Consideration will be given only to comments received on or before June 16, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–034–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–034–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: On April 15, 1997, we published in the **Federal Register** (62 FR 18263–18264, Docket No. 97–034–1) an interim rule that added The Netherlands to the list of countries where bovine spongiform encephalopathy (BSE) exists because the disease had been detected in a cow in that country on March 21, 1997. The interim rule prohibits or restricts the importation into the United States of certain fresh, chilled, and frozen meat, and certain other animal products and byproducts from ruminants that have been in The Netherlands. The effective date of that interim rule was April 10, 1997. We are changing the effective date of that rule to March 21, 1997. This action is necessary to ensure that the prohibitions and restrictions established by the interim rule apply to animal products and byproducts that were shipped to the United States from The Netherlands between March 21, 1997, when BSE was detected in The Netherlands, and April 10, 1997, when our interim rule was signed.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to March 21, 1997; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11887 Filed 5–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–076–2]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule allows fresh, chilled, and frozen pork and pork products from the Mexican State of Baja California to transit the United States, under certain conditions, for export to another country. Previously, we allowed such pork and pork products only from the Mexican States of Sonora, Chihuahua, and Yucatan to transit the United States for export. Otherwise, fresh, chilled, or frozen pork and pork products are prohibited movement into the United States from Mexico because of hog cholera in Mexico. Baja California has not had an outbreak of hog cholera since 1985 and we believe that fresh, chilled, and frozen pork and pork products from Baja California could transit the United States under seal with minimal risk of introducing hog cholera. This action will facilitate trade.

EFFECTIVE DATE: May 7, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from

countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in Mexico, pork and pork products from Mexico must meet the requirements of § 94.9 to be imported into the United States. However, under § 94.15, pork and pork products that are from certain Mexican States and that are not eligible for entry into the United States in accordance with the regulations may transit the United States for immediate export if certain conditions are met. Prior to the effective date of this final rule, only pork and pork products from Sonora, Chihuahua, and Yucatan, Mexico, were eligible to transit the United States in accordance with § 94.15.

On December 31, 1996, we published in the **Federal Register** (61 FR 69052–69054, Docket No. 96–076–1) a proposal to amend the regulations by allowing pork and pork products from the Mexican State of Baja California to transit the United States for export under the same conditions as pork and pork products from Sonora, Chihuahua, and Yucatan.

These conditions were set forth as follows:

1. Any person wishing to transport pork or pork products from Baja California through the United States for export must first obtain a permit for importation from the Animal and Plant Health Inspection Service (APHIS).

2. The pork or pork products must be packaged in Baja California in a leakproof container and sealed with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.

3. The person moving the pork or pork products through the United States must inform the APHIS officer at the United States port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The time and date that the pork or pork products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, the permit number, and the serial numbers of the seals on the containers.

4. The pork or pork products must transit the United States under Customs bond.

5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

We solicited comments concerning our proposal for 60 days ending March 3, 1997. We received two comments by that date. They were from a domestic pork industry group and a veterinary association. One commenter agreed with the proposed rule. The other commenter commended the efforts of Mexican pork producers and the Mexican Government in their hog cholera eradication efforts, stated support for the principles of regionalization outlined in the proposed rule, reemphasized the importance of surveillance and control measures to minimize the risk of transmitting hog cholera to the U.S. swine population, and discussed a related trade issue. The commenter did not recommend any clarification or changes to the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions no longer found to be warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule allows fresh, chilled, and frozen pork and pork products from the Mexican State of Baja California to transit the United States, under certain conditions, for export to another country.

There has not been an outbreak of hog cholera in Baja California, Mexico, since 1985. Therefore, there appears to be little risk of hog cholera exposure from shipments of pork and pork products from Baja California transiting the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States should be minimal.

Shipments of pork and pork products from Baja California transiting the United States could economically benefit some U.S. entities as a result of this rulemaking since they will be involved in the transportation of the pork and pork products within the United States (from the port of entry to the port of embarkation). The additional economic activity from such trucking activities is estimated to be no more than $49,250 per year, assuming 200 trips per year are made, which is approximately the level of current shipments from Sonora through the United States. No interagency or governmental effects are expected in connection with this rule.

Mexico is a net pork importer, with Mexican imports representing 7 to 8 percent of production. With favorable income growth expected in Mexico due to trade liberalization, pork exports are expected to be limited. Furthermore, facilitating export opportunities for the Mexican pork industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States where it still exists.

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 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent 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 section 3507(d) of the Paperwork Reduction Act of 1995 (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). The assigned OMB control number is 0579–0040.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraph (b), the introductory text and paragraph (b)(2) are amended by adding the words "Baja California," immediately before the word "Chihuahua".

3. Section 94.15 is amended by adding the following phrase at the end of the section:

"(Approved by the Office of Management and Budget under control number 0579–0040)".

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11884 Filed 5–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 703 and 1023

RIN 1901–AA30

Board of Contract Appeals; Contract Appeals

AGENCY: Board of Contract Appeals, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy amends its regulations concerning proceedings and functions of the Board of Contract Appeals. This action is necessary to update the rules and to reorganize and supplement the existing rules to provide the public with a better understanding of the Board and its functions. This rule adds an overview of the Board's organization, authorities and various functions, enunciates longstanding policies favoring the use of Alternative Dispute Resolution (ADR), and confirms the Board's authority to engage in ADR and provide an array of ADR neutral services, modifies the Rules of Practice for Contract Disputes Act (CDA) appeals to implement changes made to the CDA by the Federal Acquisition Streamlining Act (FASA), and removes unnecessary and obsolete rules related to the Board's non-CDA appeals and Contract Adjustment Board functions.

DATES: This rule is effective June 6, 1997.

Applicability date: In accordance with § 1023.102, rule 1(a) and (b) of § 1023.120 shall apply to appeals filed on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, (202) 426–9316.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
II. Procedural Requirements
A. Review under Executive Order 12866
B. Review under Executive Order 12988
C. Review under the Regulatory Flexibility Act
D. Review under the Paperwork Reduction Act
E. Review under the National Environmental Policy Act
F. Review under Executive Order 12612
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

A. Discussion

On October 30, 1996, the Department published a proposed rule in the **Federal Register** (61 FR 55932) to update and reorganize the various rules previously issued by the Energy Board of Contract Appeals. The Department now adopts the proposed rule as final.

This Rulemaking has several purposes. First, the Overview, §§ 1023.1–1023.9, set out a statement of the organization, functions, and authorities of the Board of Contract Appeals (Board or EBCA) of the Department of Energy (DOE) and principles applicable to all the Board's functions. The Board has functions other than the resolution of disputes brought under the Contract Disputes Act (CDA), yet the previous rules did not list and describe these functions and their associated authorities in any single place. This proved confusing to some who were unfamiliar with the Board. The revised rules, in one place, describe and cross-reference all of the standing functions and rules of the Board. This change should help those unfamiliar with the Board to understand its several functions and the limits of its authority, and to assist potential appellants to determine whether the Board is the proper forum for the resolution of a particular dispute. Moreover, the rule provides, for informational purposes, the Board's delegated general authorities, which are set forth in a delegation order from the Secretary of Energy.

Second, this Rulemaking enunciates in § 1023.8, the Board's and DOE's policy favoring the use of ADR in the resolution of contract and other disputes. The previous rules did not recognize ADR nor the authority of the Board and its members to employ and participate in ADR procedures. The Board has a longstanding policy to encourage the consensual resolution of disputes. These revised rules contain an explicit statement of the Board's and DOE's policy regarding ADR. In addition to the statement of policy contained in Section 1023.8, express Board ADR authorities are set forth in §§ 1023.1(d), 1023.3(b), 1023.4, 1023.5, and 1023.6. Included are authorities permitting the Chair to exchange neutrals with other Boards of Contract Appeals. Further, the Board is authorized to provide neutral services for certain contract disputes below the prime contract level in instances specified in Section 1023(d).

Third, the Federal Acquisition Streamlining Act (FASA) modified the CDA with respect to matters involving claim certification and availability of certain appeal procedures. This Rulemaking updates the Board's rules of practice (Rules 1, 6, 13, and 14) to conform to these changes. The Streamlining Act increased the threshold for CDA claim certification to $100,000, from $50,000. The Act also increased the amounts under which a claim is eligible for either accelerated procedures or small claims procedures. Claims under $100,000 (previously $50,000) will be eligible for accelerated procedures and claims under $50,000 (previously $10,000) will be, at the contractor's election, resolved under the small claims procedures.

Fourth, this Rulemaking removes the separate rules of practice (10 CFR part 703) for contract and subcontract appeals which are not governed by the CDA (non-CDA appeals) and the rules of the Contract Adjustment Board (10 CFR part 1023, subpart B). No pre-CDA appeals have been filed with the Board for more than eight years and separate rules are no longer necessary. The rules of practice for CDA appeals (10 CFR part 1023, subpart A) will be applicable to both CDA appeals and non-CDA appeals from contracting officer decisions and to any subcontractor disputes over which the Board has jurisdiction. In non-CDA appeals, the Board may make procedural modifications determined by the Board to be appropriate, such as disregarding rule provisions pertaining

to claim certification. Regulatory authority for appeals to the Contract Adjustment Board no longer exists and the rules of the Contract Adjustment Board are removed hereby.

Finally, the Rulemaking renumbers the rules of practice for contract appeals to the Board to allow for the inclusion of the Statement of Organization, Functions, and Authorities and minor conforming changes would be made to the Rules of Practice.

No comments were received following publication of the proposed rule. However, § 1023.2(a) has been revised to reflect that the Board has moved and has new addresses and telephone numbers. No other changes have been made.

II. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The rules were reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. In the notice of proposed rulemaking, DOE certified that the rules will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

The DOE has determined that the rules are exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

E. Review Under the National Environmental Policy Act

The DOE has concluded that the promulgation of these rules does not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), or the Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environment assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This rule revises certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. The impact of this rulemaking impact is less than $100 million.

List of Subjects in 10 CFR Parts 703 and 1023

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, DC on April 28, 1997.

E. Barclay Van Doren,

Chair, Department of Energy, Board of Contract Appeals.

For the reasons set forth in the preamble, parts 703 and 1023 of title 10 of the Code of Federal Regulations are amended as set forth below:

PART 703—CONTRACT APPEALS [REMOVED]

1. Under the authority of 42 U.S.C. 2201(p), 42 U.S.C. 5814 (b) & (h) and 42 U.S.C. 7151, part 703 is removed.

PART 1023—CONTRACT APPEALS

2. The authority citation for part 1023 is added to read as follows:

Authority: 42 U.S.C. 2201, 5814, 7151, 7251; 5 U.S.C. 301; 41 U.S.C. 321, 322, 601–613; 5 U.S.C. 571–583; 9 U.S.C. 1–16 unless otherwise noted.

3. Part 1023 is amended by adding an undesignated center heading and §§ 1023.1 through 1023.9 before subpart A to read as follows:

Overview: Organization, Functions and Authorities

Sec.

1023.1 Introductory material on the Board and its functions.
1023.2 Organization and location of the Board.
1023.3 Principles of general applicability.
1023.4 Authorities.
1023.5 Duties and responsibilities of the Chair.
1023.6 Duties and responsibilities of Board members and staff.
1023.7 Board decisions; assignment of judges.
1023.8 Alternative dispute resolution (ADR).
1023.9 General guidelines.

§ 1023.1 Introductory material on the Board and its functions.

(a) The Energy Board of Contract Appeals ("EBCA" or "Board") functions as a separate quasi-judicial entity within the Department of Energy (DOE). The Secretary has delegated to the Board's Chair the appropriate authorities necessary for the Board to maintain its separate operations and decisional independence.

(b) The Board's primary function is to hear and decide appeals from final decisions of DOE contracting officers on claims pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601 *et seq*. The Board's Rules of Practice for these appeals are set forth in subpart A of this part. Rules relating to recovery of attorney fees and other expenses under the Equal Access to Justice Act are set forth in subpart C of this part.

(c) In addition to its functions under the CDA, the Secretary in Delegation Order 0204–162 has authorized the Board to:

(1) Adjudicate appeals from agency contracting officers' decisions not taken pursuant to the CDA (non-CDA disputes) under the Rules of Practice set forth in subpart A of this part;

(2) Perform other quasi-judicial functions that are consistent with the Board members' duties under the CDA as directed by the Secretary;

(3) Serve as the Energy Financial Assistance Appeals Board to hear and decide certain appeals by the Department's financial assistance recipients as provided in 10 CFR 600.22, under Rules of Procedure set forth in 10 CFR part 1024;

(4) Serve as the Energy Invention Licensing Appeals Board to hear and decide appeals from license terminations, denials of license applications and petitions by third-parties for license terminations, as provided in 10 CFR part 781, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate with advance notice to the parties; and

(5) Serve as the Energy Patent Compensation Board to hear and decide, as provided in 10 CFR part 780, certain applications and petitions filed under authority provided by the Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919 (1954), and the Invention Secrecy Act, 35 U.S.C. 181–188, including:

(i) Whether a patent is affected with the public interest;

(ii) Whether a license to a patent affected by the public interest should be granted and equitable terms therefor; and

(iii) Whether there should be allotment of royalties, award, or compensation to a party contributing to the making of certain categories of inventions or discoveries, or an owner of a patent within certain categories, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate, with advance notice to the parties.

(d) The Board provides alternative disputes resolution neutral services and facilities, as agreed between the parties and the Board, for:

(1) Disputes related to the Department's prime contracts and to financial assistance awards made by the Department.

(2) Disputes related to contracts between the Department's cost-reimbursement contractors, including Management and Operating Contractors (M&Os) and Environmental Remediation Contractors (ERMCs), and their subcontractors. Additionally, with the consent of both the responsible prime DOE cost-reimbursement contractor and the cognizant DOE Contracting Officer, the Board may provide neutral services and facilities for disputes under second tier subcontracts where the costs of litigating the dispute might be ultimately charged to the DOE as allowable costs through the prime contract.

(3) Other matters involving DOE procurement and financial assistance, as appropriate.

§ 1023.2 Organization and location of the Board.

(a) *Location of the Board.* (1) The Board's offices are located at, and hand and commercial parcel deliveries should be made to: Board of Contract Appeals, U.S. Department of Energy, 950 L'Enfant Plaza, SW., Suite 810, Washington, DC 20024.

(2) The Board's mailing address is as follows. The entire nine digit ZIP code should be used to avoid delay: Board of Contract Appeals, U.S. Department of Energy, HG–50, Building 950, Washington, DC 20585–0116.

(3) The Board's telephone numbers are (202) 426–9316 (voice) and (202) 426–0215 (facsimile).

(b) *Organization of the Board.* As required by the CDA, the Board consists of a Chair, a Vice Chair, and at least one other member. Members are designated Administrative Judges. The Chair is designated Chief Administrative judge and the Vice Chair, Deputy Chief Administrative Judge.

§ 1023.3 Principles of general applicability.

(a) *Adjudicatory functions.* The following principles shall apply to all adjudicatory activities whether pursuant to the authority of the CDA, authority delegated under this part, or authority of other laws, rules, or directives.

(1) The Board shall hear and decide each case independently, fairly, and impartially.

(2) Decisions shall be based exclusively upon the record established in each case. Written or oral communication with the Board by or for one party is not permitted without participation or notice to other parties. Except as provided by law, no person or agency, directly or indirectly involved in a matter before the Board, may submit off the record to the Board or the Board's staff any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal, nor shall any member of the Board or of the Board's staff accept or consider ex parte communications from any person. This provision does not apply to consultation among Board members or staff or to other persons acting under authority expressly granted by the Board with notice to parties. Nor does it apply to communications concerning the Board's administrative functions or procedures, including ADR.

(3) Decisions of the Board shall be final agency decisions and shall not be subject to administrative appeal or administrative review.

(b) *Alternative Dispute Resolution (ADR) Functions.* (1) Board judges and personnel shall perform ADR related functions impartially, with procedural fairness, and with integrity and diligence.

(2) Ex parte communications with Board staff and judges limited to the nature, procedures, and availability of ADR through the Board are permitted and encouraged. Once parties have agreed to engage in ADR and have entered into an ADR agreement accepted by the Board, ex parte communications by Board neutrals,

support staff and parties shall be as specified by any applicable agreements or protocols and as is consistent with law, integrity, and fairness.

(3) Board-supplied neutrals and support personnel shall keep ADR matters confidential and comply with any confidentiality requirements of ADR agreements accepted by the Board. Board personnel may not disclose any confidential information unless permitted by the parties or required to do so by law.

§ 1023.4 Authorities.

(a) *Contract Disputes Act Authorities.* The CDA imposes upon the Board the duty, and grants it the powers necessary, to hear and decide, or to otherwise resolve through agreed procedures, appeals from decisions made by agency contracting officers on contractor claims relating to contracts entered into by the DOE or relating to contracts of another agency, as provided in Section 8(d) of the CDA, 41 U.S.C. 607(d). The Board may issue rules of practice or procedure for proceedings pursuant to the CDA. The CDA also imposes upon the Board the duty, and grants it powers necessary, to act upon petitions for orders directing contracting officers to issue decisions on claims relating to such contracts, 41 U.S.C. 605(c)(4). The Board may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both, 41 U.S.C. 610.

(b) *General Powers and Authorities.* The Board's general powers include, but are not limited to, the powers to:

(1) Manage its cases and docket; issue procedural orders; conduct conferences and hearings; administer oaths; authorize and manage discovery, including depositions and the production of documents or other evidence; take official notice of facts within general knowledge; call witnesses on its own motion; engage experts; dismiss actions with or without prejudice; decide all questions of fact or law raised in an action; and make and publish rules of practice and procedure;

(2) Exercise, in proceedings to which it applies, all powers granted to arbitrators by the Federal Arbitration Act, 9 U.S.C. 1–14, including the power to issue summonses.

(c) In addition to its authorities under the CDA, the Board has been delegated by Delegation Order 0204–162 issued by the Secretary of Energy, the following authorities:

(1) Issue rules, including rules of procedure, not inconsistent with this section and departmental regulations;

(2) Issue subpoenas under the authority of § 161.c of the Atomic Energy Act of 1954, 42 U.S.C. 2201(c), as applicable;

(3) Such other authorities as the Secretary may delegate.

§ 1023.5 Duties and Responsibilities of the Chair.

The Chair shall be responsible for the following:

(a) The proper administration of the Board;

(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;

(c) Monitoring the progress of individual cases to promote their timely resolution;

(d) Appointment and supervision of a Recorder;

(e) Arranging for the services of masters, mediators, and other neutrals;

(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;

(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;

(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less than three members because of vacant positions, protracted absences, disabilities or disqualifications;

(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;

(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon selection, be appointed to serve as provided in the CDA;

(k) Determining whether member duties are consistent with the CDA; and

(l) Reporting Board activities to the Secretary not less often than biennially.

§ 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board's functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in § 1023.3.

(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.

(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from ex parte disclosure of information concerning any Board deliberations.

§ 1023.7 Board decisions; assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this Part. This subparagraph shall not preclude the Presiding Administrative Judge from taking dispositive actions as provided in this Part or by agreement of the parties. Other persons acting as commissioners, magistrates, masters, or hearing officers shall have such powers as the Board shall delegate.

(b) Except as provided by law, rule, or agreement of the parties, contract appeals and other cases are assigned to a deciding panel established by the Board Chair consisting of two or more administrative judges.

(c) The concurring votes of a majority of a deciding panel shall be sufficient to decide an appeal. All members assigned to a panel shall vote unless unavailable. The Chair will assign an additional member if necessary to resolve tie votes.

§ 1023.8 Alternative dispute resolution (ADR).

(a) *Statement of Policy.* It is the policy of the DOE and of the Board to facilitate consensual resolution of disputes and to employ ADR in all of the Board's functions when agreed to by the parties. ADR is a core judicial function performed by the Board and its judges.

(b) *ADR for Docketed Cases.* Pursuant to the agreement of the parties, the Board, in an exercise of discretion, may approve either the use of Board-annexed ADR (ADR which is conducted under Board auspices and pursuant to Board order) or the suspension of the Board's procedural schedule to permit the parties to engage in ADR outside of the Board's purview. While any form of

ADR may be employed, the forms of ADR commonly employed using Board judges as neutrals are: case evaluation by a settlement judge (with or without mediation by the judge); arbitration; mini-trial; summary (time and procedurally limited) trial with one-judge; summary binding (non-appealable) bench decision; and fact-finding.

(c) *ADR for Non-Docketed Disputes.* As a general matter the earlier a dispute is identified and resolved, the less the financial and other costs incurred by the parties. When a contract is not yet complete there may be opportunities to eliminate tensions through ADR and to confine and resolve problems in a way that the remaining performance is eased and improved. For these reasons, the Board is available to provide a full range of ADR services and facilities before, as well as after, a case is filed with the Board. A contracting officer's decision is not a prerequisite for the Board to provide ADR services and such services may be furnished whenever they are warranted by the overall best interests of the parties. The forms of ADR most suitable for mid-performance disputes are often the non-dispositive forms such as mediation, facilitation and fact-finding, mini-trials, or non-binding arbitration, although binding arbitration is also available.

(d) *Availability of Information on ADR.* Parties are encouraged to consult with the Board regarding the Board's ADR services at the earliest possible time. A handbook describing Board ADR is available from the Board upon request.

§ 1023.9 General guidelines.

(a) The principles of this Overview shall apply to all Board functions unless a specific provision of the relevant rules of practice applies. It is, however, impractical to articulate a rule to fit every circumstance. Accordingly, this part, and the other Board Rules referenced in it, will be interpreted and applied consistent with the Board's responsibility to provide just, expeditious, and inexpensive resolution of cases before it. When Board rules of procedure do not cover a specific situation, a party may contend that the Board should apply pertinent provisions from the Federal Rules of Civil Procedure. However, while the Board may refer to the Federal Rules of Civil Procedure for guidance, such Rules are not binding on the Board absent a ruling or order to the contrary.

(b) The Board is responsible to the parties, the public, and the Secretary for the expeditious resolution of cases before it. Accordingly, subject to the objection of a party, the procedures and time limitations set forth in rules of procedure may be modified, consistent with law and fairness. Presiding judges and hearing officers may issue prehearing orders varying procedures and time limitations if they determine that purposes of the CDA or the interests of justice would be advanced thereby and provided both parties consent. Parties should not consume an entire period authorized for an action if the action can be sooner completed. Informal communication between parties is encouraged to reduce time periods whenever possible.

(c) The Board shall conduct proceedings in compliance with the security regulations and requirements of the Department or other agency involved.

4. Subpart A is amended by removing §§ 1023.1 through § 1023.6, redesignating § 1023.20 as § 1023.120 and adding §§ 1023.101 and 1023.102, reading as follows:

§ 1023.101 Scope and purpose.

The rules of the Board of Contract Appeals are intended to govern all appeal procedures before the Department of Energy Board of Contract Appeals (Board) which are within the scope of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). The rules, with modifications determined by the Board to be appropriate to the nature of the dispute, also apply to all other contract and subcontract related appeals which are properly before the Board.

§ 1023.102 Effective date.

The rules of the Board of Contract Appeals shall apply to all proceedings filed on or after June 6, 1997, except that Rule 1 (a) and (b) of § 1023.120 shall apply only to appeals filed on or after October 1, 1995.

§ 1023.120 [Amended]

5. Newly designated section 1023.120 is amended by revising "$50,000" to read "$100,000" in the following paragraphs:

Rule 1, paragraph (b)
Rule 1, paragraph (c)
Rule 6, paragraph (b)
Rule 14, paragraph (a)

6. Newly designated section 1023.120 is amended by revising "$10,000" to read "$50,000" in the following paragraphs:

Rule 6, paragraph (b)
Rule 13, paragraph (a)

Subpart B—[Removed and Reserved]

7. Subpart B—is removed and reserved.

§ 1023.327 [Amended]

8. Section 1023.327 of subpart C is amended by revising "10 CFR 1023.20" to read "10 CFR 1023.120."

[FR Doc. 97–11728 Filed 5–6–97; 8:45 am]
BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 630

RIN 3052–AB62

Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Quarterly Report; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 620 and 630 on March 31, 1997 (62 FR 15089). The final rule amends the regulations governing the preparation, filing, and distribution of Farm Credit System (FCS or System) bank and association reports to shareholders and investors. The rule implements a statutory amendment that supersedes the regulatory requirement that FCS institutions disseminate quarterly reports to shareholders. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 6, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR parts 620 and 630 published on March 31, 1997 (62 FR 15089) is effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: May 1, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–11783 Filed 5–6–97; 8:45 am]
BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–89–AD; Amendment 39–10005; AD 97–09–09]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Models 58P and 58PA Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (formerly Beech Aircraft Corporation) Models 58P and 58PA airplanes. This action requires inspecting for cracks in the right-hand (RH) upper and lower longeron near the second RH cabin window, inspecting for missing rivets in the cabin structure (longeron) adjacent to and aft of the second RH cabin window, repairing any cracked structure or reinforcing the longeron if it is not cracked, and installing rivets, if missing. Reports of cracks in the upper and lower longeron and missing rivets that are supposed to secure the frame, splice, and longeron together prompted this action. The actions specified by this AD are intended to prevent structural cracking to the cabin caused by missing rivets, which if not corrected, could cause decompression injuries to passengers, structural failure of the fuselage, and loss of the airplane.

DATES: Effective June 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Aircraft Company Models 58P and 58PA airplanes was published in the **Federal Register** on December 2, 1996 (61 FR 63762). The action proposed to require (1) inspecting for cracks on the right-hand (RH) lower longeron between two doublers adjacent to the lower aft side of the RH second cabin window, (2) repairing any cracks found, (3) reinforcing the longeron if no cracks are found, (4) inspecting for cracks and missing rivets in the upper longeron adjacent to and aft of the second RH cabin window, and (5) repairing any cracks and installing any rivets, if missing.

Accomplishment of the inspection, repair, and reinforcement would be in accordance with Beechcraft Service Bulletin (SB) No. 2630, Issued: November, 1995, and Raytheon Aircraft Mandatory SB No. 2691, Rev. 1, Issued: June, 1996; Revised: October, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After publication of the Supplemental NPRM, the estimated costs of the proposed actions were changed to reflect a more accurate amount for labor and parts of the initial inspection. The cost estimate increased from approximately $300 to approximately $648 per airplane, which is a difference of about $250 per airplane. There is no change to the proposed AD, only a more accurate reflection of the cost estimate to accomplish the actions proposed in the Supplemental NPRM.

The FAA's Determination

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

Cost Impact

The FAA estimates that 386 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 9 workhours (3 workhours for the inspection and 6 workhours to accomplish the reinforcement) to accomplish the action and that the average labor rate is approximately $60 an hour. Parts to accomplish the reinforcement cost $100 per airplane. In estimating the total cost impact of this AD on U.S. operators, the FAA is presuming that no cracked longeron will be found, no missing rivets will be found, and the reinforcement will need to be incorporated on each effected airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $247,040 or $648 per airplane.

If, during the inspection, cracks are found and rivets are missing, the estimated costs for accomplishing the following actions will be:

—2 workhours to install rivets at an estimated cost of $125 per airplane ($120 for labor and $5 for rivets),

—8 workhours to repair any crack in the designated area of the RH upper longeron at an estimated cost of $675 per airplane ($480 for labor and $195 for parts),

—6 workhours to re-reinforce the RH lower longeron at an estimated cost of $460 per airplane ($360 for labor and $100 for parts), or

—16 workhours to repair any crack found in the RH lower longeron at an estimated cost of $2,060 per airplane ($960 for labor and $1,100 for parts).

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–09–09. Raytheon Aircraft Company: Amendment No. 39–10005; Docket No. 95–CE–89–AD.

Applicability: Models 58P and 58PA airplanes, having the following serial numbers, and certificated in any category:

Serial Numbers Listed in Beech Service Bulletin (SB) No. 2630

TJ–2 through TJ–177
TJ–179
TJ–181 through TJ–212
TJ–214 through TJ–270
TJ–272 through TJ–283
TJ–285 through TJ–288
TJ–290 through TJ–313
TJ–315 through TJ–321
TJ–323, TJ–324
TJ–326 through TJ–368, and
TJ–370 through TJ–497

Serial Numbers Listed in Raytheon SB No. 2691

TJ–2 through TJ–121
TJ–123 through TJ 394
TJ–396 through TJ–497

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

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

To prevent structural cracking to the cabin caused by missing rivets, which, if not detected and corrected, could cause decompression injuries to passengers, structural failure of the fuselage, and loss of the airplane, accomplish the following:

(a) Inspect the cabin window upper longeron (next to the upper aft splice) between the second and third right-hand (RH) cabin side windows for cracks and missing rivets in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beechcraft Mandatory (Beech) Service Bulletin (SB) No. 2630, Issued: November 1995.

(1) If cracks are found in the upper longeron, prior to further flight, repair the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2630, Issued: November 1995.

(2) If rivets are found missing, prior to further flight, install the rivets in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2630, Issued: November 1995.

(b) Inspect the RH lower longeron between the two doublers adjacent to the lower aft side of the RH second cabin window for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART I of Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

(1) If cracks are found in the RH lower longeron, prior to further flight, repair and reinforce the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART II in Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

(2) If no cracks are found in the RH lower longeron, prior to further flight, reinforce the longeron in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART III in Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

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

(d) 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, 1801 Airport Road, Room 100, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Wichita Aircraft Certification Office.

(e) The inspections, installations, repairs, and reinforcements required by this AD shall be done in accordance with Beechcraft Service Bulletin No. 2630, Issued: November, 1995, and Raytheon Aircraft Mandatory Service Bulletin No. 2691, Rev. 1, Issued: June, 1996; Revised: October, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–10005) becomes effective on June 30, 1997.

Issued in Kansas City, Missouri, on April 30, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11895 Filed 5–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–45–AD; Amendment 39–10016; AD 97–07–10 R1]

RIN 2120–AA64

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document clarifies information in an existing airworthiness directive (AD) that applies to de Havilland DHC–6 series airplanes that do not have a certain wing strut modification (Modification 6/1581) incorporated. That AD currently requires inspecting the wing struts for cracks or damage (chafing, etc.), replacing wing struts that are found damaged beyond certain limits or are found cracked, and incorporating Modification No. 6/1581 to prevent future chafing damage. The actions specified in that AD are intended to prevent failure of the wing struts, which could result in loss of control of the airplane. This document clarifies the requirements of the current AD by eliminating all reference to repetitive inspections. The AD results from several reports of wing strut damage caused by the upper fairing rubbing against the wing strut.

DATES: Effective May 23, 1997.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 23, 1997 (62 FR 15373).

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New

York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 26, 1997, the Federal Aviation Administration (FAA) issued AD 97–07–10, Amendment 39–9984 (62 FR 15373, April 1, 1997), which applies to de Havilland DHC–6 series airplanes. That AD requires inspecting the wing struts for cracks or damage (chafing, etc.), replacing wing struts that are found damaged beyond certain limits or are found cracked, and incorporating Modification No. 6/1581 to prevent future chafing damage. Modification No. 6/1581 consists of installing a preformed nylon shield around the area of each wing strut at the upper end closest to the wing. Accomplishment of the inspection and modification is required in accordance with de Havilland Service Bulletin No. 6/342, dated February 23, 1976.

That AD resulted from several reports of wing strut damage caused by the upper fairing rubbing against the wing strut on the affected airplanes. The actions required by that AD are intended to prevent failure of the wing struts, which could result in loss of control of the airplane.

Need for the Correction

Since the issuance of that AD, the FAA noticed that paragraph (b)(1) of the AD is unnecessary. This paragraph reads:

> Incorporating Modification No. 6/1581 eliminates the repetitive inspection requirement of this AD.

Repetitive inspections are not required by AD 97–07–10. Leaving this paragraph in the AD could lead to confusion among the operators of the affected airplanes as to what is the intent of the AD. In addition to deleting paragraph (b)(1) of this AD, paragraph (b)(2) will become part of paragraph (b).

Correction of Publication

This document clarifies the requirements of AD 97–07–10, and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is being reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains May 23, 1997.

Since this action only clarifies a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 97–07–10, Amendment 39–9984 (62 FR 15373, April 1, 1997), and by adding a new airworthiness directive (AD), to read as follows:

97–07–10 R1 DeHavilland: Amendment 39–10016; Docket No. 93–CE–45–AD. Revises AD 97–07–10, Amendment 39–9984.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category, that do not have Modification No. 6/1581 incorporated.

Note 1: Modification No. 6/1581 consists of installing a preformed nylon shield around the area of each wing strut at the upper end closest to the wing.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the wing struts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the wing struts, part number (P/N) C6W1005 (or FAA-approved equivalent), for cracks or damage (chafing, etc.) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/342, dated February 23, 1976.

(1) If damage is found on a wing strut that exceeds 0.025-inch in depth, exceeds a total length of 5 inches, or where any two places of damage are separated by less than 10 inches of undamaged surface over the length of the strut, prior to further flight, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(2) If any crack is found, prior to further flight, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(3) If damage is found on a wing strut that exceeds 0.010-inch in depth, provided the damage does not exceed 0.025-inch in depth, the damage does not exceed a total length of 5 inches, and where any two places of damage are separated by a minimum of 10 inches undamaged surface over the length of the strut, within 500 hours TIS after the inspection specified in paragraph (a) of this AD, replace the wing strut with an airworthy FAA-approved part in accordance with the applicable maintenance manual.

(b) Within the next 600 hours TIS after the effective date of this AD, incorporate Modification No. 6/1581 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/342, dated February 23, 1976. Incorporating Modification No. 6/1581 may be accomplished at any time prior to 600 hours TIS after the effective date of this AD, at which time it must be incorporated.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) The inspections and modification required by this AD shall be done in accordance with de Havilland Service Bulletin No. 6/342, dated February 23, 1976. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 23, 1997 (62 FR 15373, April 1, 1997). Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–10016) becomes effective on May 23, 1997.

Issued in Kansas City, Missouri, on May 1, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11880 Filed 5–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 950

[Docket No. 970306046–7046–01]

RIN 0648–ZA25

Schedule of Fees for Access to NOAA Environmental Data and Information and Products Derived Therefrom

AGENCY: National Environmental Satellite Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: In order to adequately respond to public requirements for access to environmental data, information, and products, archived at NESDIS' national data centers and for related services, NESDIS must upgrade its data handling capabilities at these centers. In accordance with Government policy on cost recovery, as reflected in OMB Circular A–130, NESDIS will recover the cost of disseminating its data and information, including the cost of this upgrade, from the user community. Accordingly, NESDIS is establishing a new schedule of fees for the sale of its data, information, products, and related services to commercial users which reflects the additional costs involved. Because NESDIS is responsible for promoting research and education and because these additional fees would hinder these activities by other Governmental entities, universities, nonprofit organizations, and depository libraries, NESDIS has made an exception for these organizations. It will continue to charge its existing fees to these organizations for their noncommercial use.

EFFECTIVE DATE: June 6, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Money (704) 271–4680.

SUPPLEMENTARY INFORMATION: NESDIS maintains some 1300 data bases containing over 2400 environmental variables at three National Data Centers and seven World Data Centers. These centers respond to over 2,000,000 requests for these data and products annually from over 70 countries. This collection of environmental data and products is growing exponentially, both in size and sophistication. In order to provide the public with up-to-date and timely access to these data and products at reasonable cost and to continue to provide related services, NESDIS must make a substantial investment to modernize the data dissemination capability of each center.

The modernization effort will upgrade computer hardware and software systems such that requests for environmental data and information can be serviced more efficiently. It will ultimately allow users to readily locate, browse, access and order data and information on-line at a significantly reduced cost. Users will be provided a single point of access for all NESDIS environmental data and information.

As anticipated by Congress, the cost of these improvements, to NESDIS' information dissemination capability estimated at approximately $20 million, will be recovered from the users who access these data. This cost will be spread over the lifetime of the equipment, conservatively estimated at 8 years, resulting in cost recovery in each year of about $2.4 million. Allocating the additional costs in this manner results in a modest increase in the current fees as set forth in the attached fee schedule.

New Fee Schedule

The new fee schedule lists both the current fee charged for each item and the new fee to be charged to commercial users that will take effect beginning June 6, 1997. The schedule applies to listed services provided by NESDIS on or after this date, except for products and services covered by a subscription agreement in effect as of this date that extends beyond this date. In those cases, the increased fees will apply upon renewal of the subscription agreement or at the earliest amendment date provided by the agreement.

This Schedule also sets forth the fees that NESDIS will charge for on-line access via the Internet, *see* "On-Line Products and Services." It is anticipated that this on-line capability will begin to become operational within a year and, once available, will provide the means to satisfy many user requirements at substantially reduced cost. The overall fee schedule anticipates that providing this new access route at lower cost will substantially increase the number of users to help defray the costs.

Exceptions and Limitations

Appendix IV to OMB Circular A–130 requires agencies to balance the basic principle of cost recovery against other Governmental policies, "specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended." Where user full-cost recovery would constitute a "significant barrier to carrying out this responsibility, the agency may have grounds for reducing or eliminating its user charges * * * or for exempting some recipients from the charge."

Stimulating research and education is critical, both to support NOAA's operational mission and as a key element of its research mission, *see e.g.*, 49 U.S.C. § 44720. NESDIS believes that were the proposed increase in fees applied to universities and other non-profit organizations that use its environmental data and information for research and educational purposes, it could negatively impact these activities and could, therefore, impair NESDIS' mission responsibility. Therefore, NESDIS has determined that it is appropriate to exempt universities and nonprofit research organizations and depository libraries from these additional fees. Any data provided to these recipients will include a provision which restricts their use to noncommercial activities.

A. Classification Under Executive Order 12866

This rule has been determined to be significant for purposes of E.O. 12866, and was reviewed by OMB.

B. Regulatory Flexibilty Act Analysis

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this rule falls within the proprietary exception of subparagraph (a)(2) of section 553. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). are not applicable.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements subject to the Paperwork Reduction Act of 1980.

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that issuance of this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 950

Administrative practice and procedure, Reporting and recordkeeping requirements, User fees.

Authority: 5 U.S.C. 552, 553, Reorganization Plan No. 4 of 1970.

Dated: May 1, 1997.

Gregory W. Withee,

Deputy Assistant Administrator for Satellite and Information Services.

For the reasons set out in the preamble, 15 CFR Part 950 is amended as follows:

Appendix A to Part 950 [Amended]

Appendix A is added at the end of 15 CFR Part 950 to read as follows:

Appendix A—Schedule of User Fees for Access to NOAA Environmental Data

Name of product/data/publication/information/service	Current fee	Commercial user fee
NOAA National Data Centers Standard User Fees		
Off-Line Products and Services:		
Magnetic Tape Copy	$155.00	$210.00
Diskette Copy	40.00	50.00
CD–ROM:		
Conventional	75.00	100.00
Specialized	130.00	175.00
Recordable Copy	170.00	225.00
Microfilm Reel copy:		
100 Feet	30.00	40.00
1,000 Feet	140.00	190.00
Paper Copies	0.30	0.40
Microprints	0.30	0.40
Posters	18.00	18.00
Slide Sets	25.00	25.00
Publications:		
Non-Serial Pubs less than 20 Pages	8.00	12.00
Non-Serial Pubs 20 or more Pages	15.00	20.00
DOC Certifications of Records	45.00	60.00
General Certifications	35.00	45.00
Priority Surcharge	45.00	60.00
Overnight Rush Surcharge	75.00	100.00
Domestic Fax Charge (Same Day Turnaround)	65.00	85.00
Foreign Fax Charge (Same Day Turnaround)	85.00	115.00
On-Line Products and Services*		
Publications:		
Limited Access	2.00	2.00
Unlimited Access	20.00	20.00
Observation Forms:		
Limited Access	5.00	5.00
Unlimited Access	50.00	50.00
Satellite Datasets:		
Limited Access	30.00	30.00
Unlimited Access	200.00	200.00
In-situ Datasets:		
Limited Access	20.00	20.00
Unlimited Access	200.00	200.00
CD–ROM Access (unlimited)	20.00	20.00
Guide/Inventory/Browse Access	(1)	(1)
Additional National Climatic Data Center User Fees		
Local Climatological Data Publication	4.00	5.00
Climatological Data Publication	5.00	7.00
Storm Data Publication	5.00	7.00
Monthly Climatic Data of the World Publication	5.00	7.00
Hourly Precipitation Data Publication	5.00	7.00
Local Climatological Data Subscription	24.00	32.00
Climatological Data Subscription	32.00	45.00
Storm Data Subscription	53.00	70.00
Monthly Climatic Data of the World Subscriptions	43.00	55.00
Hourly Precipitation Data Subscription	47.00	65.00
Selected Data Elements (6250/Cart./8mm/4mm/FTP)	230.00	300.00
Diskette (Data Selection)	195.00	260.00

Name of product/data/publication/information/service	Current fee	Commercial user fee
Additional National Oceanographic Data Center User Fees		
Data Selection/Retrieval:		
Printout	103.00	140.00
Magnetic Tape	199.00	265.00
Magnetic Diskette	64.00	85.00
CD–ROM, Recordable	205.00	270.00
Computer Data Transfer (FTP)	145.00	190.00
CD–ROM Sets:		
World Ocean Atlas 1994:		
Individual Discs	36.00	50.00
Complete Set (10 Discs)	360.00	480.00
NOAA Buoy Database:		
Initial Set (thru July 1992):		
Individual Discs	42.00	55.00
Complete Set (14 Discs)	588.00	780.00
Update Discs (8/92–12/94)		
Individual Discs	42.00	55.00
Complete Set (7 Discs)	294.00	390.00
Update Disc 1995 (Full Year, Compressed)	75.00	100.00
Geosat Altimeter Crossover Difference (T2 GDRs):		
Individual Discs	28.00	40.00
Complete Set (6 Discs)	168.00	225.00
Geosat Altimeter Crossover Difference:		
Individual Discs	22.00	30.00
Complete Set (8 Discs)	176.00	235.00
Geosat Geodetic Mission Data:		
Individual Discs	38.00	50.00
Complete Set (4 Discs)	152.00	200.00

* Under Development.
[1] No charge.

[FR Doc. 97–11789 Filed 5–6–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 97–35]

Addition of Midland International Airport to List of Designated Landing Locations for Private Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the user-fee airport at Midland, Texas (Midland International Airport) to the list of designated airports at which private aircraft arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast from certain locations in the southern portion of the Western Hemisphere must land for Customs processing. This amendment is made to improve the effectiveness of Customs enforcement efforts to combat the smuggling of drugs by air into the United States, and will also help to improve service to the community, by relieving congestion at Presidio-Lely International, Del Rio International, and Eagle Pass Municipal Airports, which are also located in Texas.

EFFECTIVE DATE: June 6, 1997.

FOR FURTHER INFORMATION CONTACT: Gay Laxton, Passenger Operations Division, Office of Field Operations, (202) 927–5709.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat drug-smuggling efforts, Customs air commerce regulations were amended in 1975 to impose special reporting requirements and control procedures on private aircraft arriving in the Continental United States from certain areas south of the United States. T.D. 75–201. Thus, since 1975, commanders of such aircraft have been required to furnish Customs with timely notice of their intended arrival, and certain private aircraft have been required to land at certain airports designated by Customs for processing. In the last twenty years the list of designated airports for private aircraft has changed and the reporting requirements and control procedures—now contained in Subpart C of Part 122 of the Customs Regulations (19 CFR subpart C, part 122)—have been amended, as necessary.

In response to a request from community officials from Midland, Texas, on December 3, 1996, Customs published a notice of proposed rulemaking in the **Federal Register** (61 FR 64041) that solicited comments concerning a proposal to amend § 122.24(b), Customs Regulations (19 CFR 122.24(b)), by adding the user-fee airport at Midland, Texas (Midland International Airport) to the list of designated airports at which private aircraft arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast from certain locations in the southern portion of the Western Hemisphere must land for Customs processing.

The public comment period for the proposed amendment closed February 3, 1997. More than 40 comments were received from individual residents, local private companies, and local, state, and federal government officials, all offering overwhelming support for the proposal. Accordingly, Customs has decided to adopt the proposed amendment to Part 122 of the Customs Regulations.

The addition of Midland International Airport to the list of designated landing sites for private aircraft will improve the effectiveness of Customs drug-

enforcement programs relative to private aircraft arrivals, as Midland is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path. Further, the designation will enhance the efficiency of the Customs Service, as the airport is close to the normal work location for inspectional personnel assigned to the Del Rio-Eagle Pass-El Paso-Laredo-Presidio Ports-area. In this regard, it is pointed out that the private aircraft processing services Customs provides at the Presidio, Del Rio, and Eagle Pass Airports will continue; designating Midland International Airport is meant to provide an alternative airport to these other airports in order to relieve air traffic congestion at those locations.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12291

This amendment expands the list of designated airports at which private aircraft may land for Customs processing. Although before a determination was made to proceed with this final rule a previous document on this subject provided notice for public comment, this amendment is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this document are exempt from consideration under E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports, Customs duties and inspection, Drug traffic control, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Security measures.

Proposed Amendment to the Regulations

For the reasons stated above, part 122, Customs Regulations (19 CFR part 122), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

2. In § 122.24, the listing of airports in paragraph (b) is amended by adding, in appropriate alphabetical order, "Midland, TX" in the column headed "Location" and, on the same line, "Midland International Airport" in the column headed "Name".

Approved: March 26, 1997.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–11780 Filed 5–6–97; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN54–1a; FRL–5819–3]

Approval and Promulgation of State Implementation Plan; IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving the following as revisions to the Indiana State Implementation (SIP) plan: A Rate-Of-Progress (ROP) plan to reduce volatile organic compound (VOC) emissions in Clark and Floyd Counties by 15 percent (%) by November 15, 1996; 1996 corrections to Clark and Floyd Counties' 1990 base year emission inventory (to establish an accurate base line for the 15% ROP plan); construction permits requiring VOC emission control at Rhodes, Incorporated (Rhodes) in Charlestown, Clark County; and a ridesharing program affecting commuters in Clark and Floyd Counties. The plan and control measures help protect the public's health and welfare by reducing the emissions of VOC that contribute to the formation of ground-level ozone, commonly known as urban smog. High concentrations of ground-level ozone can aggravate asthma, cause inflammation of lung tissue, decrease lung function, and impair the body's defenses against respiratory infection. The 15% ROP plan's control measures are expected to reduce VOC emissions in Clark and Floyd Counties by 17,215 pounds (lbs) per day. In this action, EPA is approving the above requested SIP revisions through a "direct final" rulemaking; the rationale for this approval is set forth below.

DATES: The "direct final" rule, is effective July 7, 1997, unless EPA receives adverse or critical comments by June 6, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background on 15% ROP Requirements

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) requires States with ozone nonattainment areas classified as moderate and above to submit a SIP revision known as a "15% ROP plan." This plan must reflect an actual reduction in typical ozone season weekday VOC emissions of at least 15% in the area during the first 6 years after enactment (i.e., by November 15, 1996). The emission reductions needed to achieve the 15% requirement must be calculated using a 1990 anthropogenic VOC emissions inventory as a baseline, minus emission reductions occurring by 1996 from the: (1) Federal Motor Vehicle Control Program (FMVCP) measures for the control of motor vehicle exhaust or evaporative emissions promulgated before January 1, 1990; and (2) gasoline Reid Vapor Pressure (RVP) regulations promulgated by November 15, 1990 (see 55 FR 23666, June 11, 1990). In addition, the plan must account for net growth in emissions within the nonattainment area between 1990 and 1996.

In Indiana, two ozone nonattainment areas are required to be covered by a 15% ROP plan: the Lake and Porter Counties portion of the Chicago severe ozone nonattainment area, and the Clark and Floyd Counties portion of the Louisville moderate ozone nonattainment area. Today's rulemaking action addresses only the plan for Clark and Floyd Counties; the Lake and Porter Counties 15% ROP plan has been addressed in an April 3, 1997, rulemaking action (see 62 FR 15844).

II. Indiana's 15% ROP Plan Submittal

The Act requires States to observe certain procedural requirements in

developing SIPs and SIP revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each SIP revision meet reasonable notice and public hearing requirements. The State of Indiana submitted a portion of the Clark and Floyd Counties 15% ROP plan SIP revision on December 20, 1993. The SIP revision was reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). Because Indiana had not included fully adopted rules for all the plan's control measures, nor held a public hearing on the plan, the submittal was deemed incomplete. Subsequently, Indiana held a public hearing on the plan on March 31, 1994, in New Albany, Indiana. A hearing transcript, a summary of comments from that hearing, and the Indiana Department of Environmental Management's (IDEM) response to comments were submitted on July 5, 1994. IDEM sent a supplemental submittal on July 12, 1995, which included fully adopted rules for the Clark and Floyd Counties 15% ROP plan. In a July 17, 1995, letter to Indiana, the State was informed that the SIP submittal was deemed complete.

Indiana submitted a contingency plan with the 15% ROP plan pursuant to section 172(c)(9). EPA will take action on this plan in a separate rulemaking action. The contingency plan is a separate requirement of the Act, and approval of the contingency plan is not a prerequisite for approval of the 15% ROP plan.

III. Criteria for 15% ROP Plan Approvals

The requirements for 15% ROP plans are found in section 182(b)(1) of the Act, and the following EPA guidance documents:

1. *Procedures for Preparing Emissions Projections*, EPA–450/4–91–019, Environmental Protection Agency, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992 (General Preamble).

3. "November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories," memorandum from J. David Mobley, Edwin L. Meyer, and G. T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA–452/R–92–005, Environmental Protection Agency, October 1992.

5. "Quantification of Rule Effectiveness Improvements," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993.

7. "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans'," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. "15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. "Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series," memorandum from G. T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. "Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. "Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. "Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. "Clarification of 'Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans'," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. "Review and Rulemaking on 15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. "Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. "Rate-of-Progress Plan Guidance on the 15 Percent Calculations," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. "Clarification of Issues Regarding the Contingency Measures that are Due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. "Credit for 15 Percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. "Guidance on Projection of Nonroad Inventories to Future Years," memorandum from Philip A. Lorang,

Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

25. "Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

26. "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

27. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

28. "Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations," memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

29. "Future Nonroad Emission Reduction Credits for Locomotives," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

30. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

31. "Fifteen Percent Rate-of-Progress Plans—Additional Guidance," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

32. "Update on the Credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

33. "Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from Inspection and Maintenance (I/M) and Guidance for Recalculation," memorandum from Margo Oge, Director, Office of Mobile Sources, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 13, 1996.

34. "Sample City Analysis: Comparison of Enhanced Inspection and Maintenance (I/M) Reductions Versus Other 15 Percent Rate of Progress Plan Measures," E.H. Pechan and Associates, December 12, 1996.

35. "Modeling 15 Percent Volatile Organic Compound (VOC) Reduction(s) from I/M in 1999: Supplemental Guidance," memorandum from Gay MacGregor, Director, Regional and State Programs Division, and Sally Shaver, Director, Air Quality Strategies and Standards Division, Environmental Protection Agency, December 23, 1996.

36. "15% Volatile Organic Compound (VOC) State Implementation Plan (SIP) Approvals and the 'As Soon As Practicable' Test," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Richard B. Ossias, Deputy Associate General Counsel, Division of Air and Radiation, Office of General Counsel, Environmental Protection Agency, February 12, 1997.

For a 15% ROP plan SIP to be approved, the plan must adequately justify how much emission reduction is needed to achieve 15% emission reduction by November 15, 1996, and how the plan's control strategy will secure that reduction. The procedure for calculating the needed emission reduction is as follows:

(A) Calculate the "1990 ROP inventory" by subtracting from the area's "1990 base year inventory" [1] biogenic emissions, emissions outside of the nonattainment area, and pre-enactment banked emission credits;

(B) Calculate the "1990 adjusted base year inventory" by subtracting from the 1990 ROP inventory any emission reductions from the pre-1990 FMVCP and 1990 RVP Federal regulations which occur between 1990 and 1996; [2]

(C) Calculate "15% of adjusted base year emissions" by multiplying the 1990 adjusted base year inventory by 15%;

(D) Calculate the "total required reductions by 1996" by adding emission reductions from the pre-1990 FMVCP and 1990 RVP federal rules to the 15% of adjusted base year emissions calculation; [3]

(E) Calculate the "1996 emissions target level" by subtracting from the 1990 ROP base year inventory the total required reductions by 1996;

(F) Calculate the "1996 projected emission estimate" by a number of methods, such as adding growth factors to the 1990 adjusted base-year inventory, or adding growth factors and required emission reductions to the 1990 ROP inventory; and

(G) Calculate the "reduction required by 1996 to achieve 15% net of growth" by subtracting the 1996 target emissions level from the 1996 projected emissions level.

In determining what control measures a State can use in its 15% ROP plan strategy, the Act provides under section 182(b)(1)(C) that emission reductions from control measures are creditable to the extent that they have actually occurred before November 15, 1996. In keeping with this requirement, the General Preamble states that all credited emission reductions must be real, permanent, and enforceable, and that regulations needed to implement the plan's control strategy must be adopted and implemented by the State by November 15, 1996.

The EPA has reviewed the State's submittal for consistency with the requirements of the Act and EPA guidance. A summary of EPA's analysis is provided below.

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[1] Sections 172(c)(3) and 182(a)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate inventory of actual emissions which occurred in 1990 from all sources of relevant pollutants in the nonattainment area. This inventory provides an estimate of the amount of VOC and oxides of nitrogen produced by emission sources such as automobiles, powerplants and the use of consumer solvents in the household. Because the approval of such inventories is necessary to an area's 15% ROP plan and attainment demonstration, the emission inventory must be approved prior to or with the 15% ROP plan submission.

[2] The 1990 adjusted base year inventory represents the "baseline emissions" from which the 15 percent reduction is to be calculated, as specified under section 182(b)(1)(B) of the Act. Section 182(b)(1)(B) defines baseline emissions to mean the total amounts of actual VOC emissions from all anthropogenic sources in the ozone nonattainment areas during the calendar year of 1990, excluding emissions that are eliminated by the pre-1990 FMVCP and 1990 RVP regulations. In the General Preamble, EPA interprets "calendar year" emissions to consist of typical ozone season weekday emissions, based on the fact that the ozone National Ambient Air Quality Standard (NAAQS) (0.12 parts per million, one-hour averaged) is generally exceeded or violated during ozone season weekdays when ozone precursor emissions and meteorological conditions are most conducive to ozone formation. Ozone seasons are typically the summer months.

[3] Under section 182(b)(1)(D), emission reductions pre-1990 and 1990 RVP regulations are not creditable toward meeting 15%. The emission reductions which occurred by 1996 from these regulations are added to emissions required to meet 15% to determine the total amount of emission reduction by 1996 for the area.

IV. Analysis of Clark and Floyd Counties 15% ROP Plan

Indiana's 15% ROP Summary for Clark and Floyd Counties is shown in the following table:

15% ROP SUMMARY FOR CLARK & FLOYD COUNTIES

	Lbs VOC/day
Calculation of Reduction Needs by 1996	
1990 Clark and Floyd Counties Total VOC Emissions	162,855
1990 ROP Emissions (Anthropogenic only)	86,815
1990–1996 Noncreditable Reductions (Reductions from 1990 RVP and Pre-1990 FMVCP Regulations)	18,985
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	67,830
15% of Adjusted Base Year Emissions	10,175
Total Expected Emission Reductions by 1996 (15% of Adjusted Base Year Emissions plus Noncreditable Reductions)	29,160
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	57,655
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	74,764
Reduction Needed to Achieve 15 Percent Net of Growth (1996 Projected Emissions minus 1996 Target Level)	17,109
Expected Reduction From Mandatory Controls	
Point Sources:	
Volatile Organic Liquid (VOL) Storage Tanks Rule (326 IAC 8–9)	142
Shipbuilding and Ship Repair Rule (326 IAC 8–12)	1,164
Wood Furniture Coating Rule (326 IAC 8–11)	2,445
Area Sources:	
Automobile Refinishing Rule (326 IAC 8–10)	1,172
Federal Architectural and Industrial Maintenance (AIM) Coatings Rule	750
Subtotal—Reductions From Mandatory Controls	5,673
Expected Reductions From Non Mandatory Controls	
Mobile Sources:	
Low Reid Vapor Pressure (RVP) Gasoline Rule—Mobile Sources (326 IAC 13–3)	3,800
Improved Basic Vehicle Inspection and Maintenance (I/M) Program (326 IAC 13–1.1)	2,200
Commuter Credits from Kentucky Motorists	700
Ridesharing Program	55
Area Sources:	
Stage II Gasoline Vapor Recovery Rule (326 IAC 8–4–6)	2,290
Lower RVP Gasoline Rule—Area Sources (326 IAC 13–3)	787
Residential Open Burning (326 IAC 4–1)	704
Municipal Solid Waste (MSW) Landfill Rule (326 IAC 8–8)	345
Point Sources:	
Rhodes, Inc. (Rhodes) Construction Permit	661
Subtotal—Reduction From Non Mandatory Controls	11,542
Total Creditable Reductions From 15% ROP Plan	17,215

A. Calculation of the 1990 Adjusted Base Year Emission Inventory

To determine the 1990 adjusted base year inventory, Indiana used its 1990 base year emission inventory as a starting point. This inventory was found by EPA to meet the requirements of sections 172(c)(3) and 182(a)(1) of the Act for Clark and Floyd Counties and was approved on June 20, 1994 (59 FR 31544). After this approval, Indiana identified certain errors with the point and area source portions of the inventory and made corrections to the inventory, accordingly. These corrections were included with the Clark and Floyd 15% ROP plan submittal and are being approved in today's action as a revision to the SIP (See section V of this rulemaking action). Under the revised 1990 base year emissions inventory, total VOC emissions are 162,855 lbs VOC/day. Indiana subtracted from the 1990 base year inventory biogenic emissions and emissions from outside Clark and Floyd Counties to determine that the 1990 ROP inventory level is 86,815 lbs VOC/day. No pre-enactment banked emission credit was included in the inventory.

Indiana used EPA's Mobile Source Emissions Model (MOBILE)5a emission factor model to determine the emission reductions from pre-1990 FMVCP and 1990 RVP regulations; the 1990 ROP inventory level minus these reductions equates to a 1990 adjusted base year inventory level of 67,830 lbs VOC/day. Indiana's documentation includes the actual 1990 motor vehicle emissions using 1990 vehicle miles traveled (VMT) and MOBILE5a emission factors, and the adjusted emissions using 1990 VMT and the MOBILE5a emission factors in calendar year 1996 with the appropriate RVP for the nonattainment area as mandated by EPA. The plan submittal includes adequate documentation showing how the MOBILE5a model was run to determine the expected emission reductions by 1996 from pre-1990 FMVCP and 1990 RVP.

B. 1996 ROP Target Emission Level

To calculate the 1996 target emission level for Clark and Floyd Counties, Indiana first multiplied the 1990 adjusted base year inventory by 0.15 to determine that the 15% required emission reduction by 1996 is 10,175 lbs VOC/day. Then, 18,985 lbs VOC/day of reductions from noncreditable control measures (pre-1990 FMVCP and 1990 RVP) were added to the 15% required reduction to determine that the total expected reductions by 1996 is 29,160 lbs VOC/day. Finally, Indiana subtracted the 1996 total expected

emission reductions from the 1990 ROP emission inventory to determine that the 1996 emission target level for Clark and Floyd Counties is 57,655 lbs VOC/day.

The 15% ROP plan submittal adequately documents the total expected reductions in the nonattainment area by showing each step, discussing any assumptions made, and stating the origin of the number used in the calculations.

C. Projected Emission Inventory

To determine the 1996 projected emission inventory, Indiana included in the 15% ROP plan the growth factors used together with documentation for the assumptions made. The point, area, and non-road mobile source emission inventories were projected using either source supplied data, population forecasts, historical data, or, where historical data were unavailable or not suitable to project, the U.S. Department of Commerce Bureau of Economic Analysis (BEA) regional growth data were used. The on-road mobile source emission inventory was projected using MOBILE5a. The State's calculations for growth in the on-road mobile, off-road mobile, industrial, and area source sectors are 3,940 lbs VOC/day, 691 lbs VOC/day, 1,150 lbs VOC/day, and 1,153 lbs VOC/day, respectively, for a total of 6,934 lbs VOC/day. These growth estimates were calculated in a manner consistent with EPA guidance documents. The projected emissions were added to the 1990 adjusted base year inventory to determine that the 1990 projected emission inventory level is 74,764 lbs VOC/day.

D. Creditable Reductions From Control Measures

From the calculation of the 1996 target emission level and 1996 projected emission level, Clark and Floyd Counties must reduce emissions by 17,109 lbs VOC/day to secure the 15% ROP reduction. The Clark and Floyd Counties 15% ROP plan does meet this requirement. The total creditable emission reduction achieved by the 15% ROP plan is 17,215 lbs VOC/day. Emission reductions not needed to meet 15% can be used in Clark and Floyd Counties' contingency plan or attainment plan.

The SIP submittal includes documentation of the sources or source categories which are expected to be affected by each control measure, the sources' projected 1996 emissions without controls, and the assumptions used to estimate how much each control measure will reduce the sources' 1996 emissions. These assumptions were derived primarily from Midwest Research Institute's April 30, 1993, document entitled "Support Document for Indiana's Clark and Floyd Nonattainment Area 1996 Rate-of-Progress Plan" (MRI document), which was contracted by EPA to assist Indiana in developing the 15% ROP plan.

A review of the emission reduction credit taken for each control measure follows:

VOL Storage Rule

SIP rule 326 IAC 8–9 requires special roof design and sealing requirements for certain VOL storage vessels. Indiana is only taking credit from controls on fixed roof tanks located in Floyd County. The rule's control requirements for fixed roof tanks are assumed to have an overall control efficiency estimate of 96%, with a rule effectiveness of 80%. An emission reduction of 142 lbs VOC/day has been claimed from this rule, which is acceptable.

Shipbuilding and Ship Repair Rule

SIP rule 326 IAC 8–12 requires shipbuilding and ship repair operations to comply with certain low-VOC coating requirements, coating thinning limitations, and VOC-reducing work practices. One source, Jeffboat, is affected by this rule. Jeffboat is required to use water based weld-through (shop) preconstruction primer with a VOC content of zero. This limit is significantly tighter than EPA's Control Techniques Guideline limit of 5.42 lbs VOC/gallon for preconstruction primers used in this source category (see 61 FR 44050, August 27, 1996). In addition to documentation contained in the submittal, Indiana submitted supplemental documentation showing that the rule's control measures have an estimated 73% VOC control efficiency. For the 15% ROP plan, however, Indiana conservatively took an overall 50% VOC emission reduction from the source's 1990 emission level. An emission reduction claim of 1,164 lbs VOC/day for this rule is acceptable.

Wood Furniture Coating Rule

SIP rule 326 IAC 8–11 requires wood furniture coating operations to comply with certain low-VOC coating requirements and VOC-reducing work practices. The MRI document estimated that the rule's control requirements would result in an overall 55% VOC emission reduction. However, based on discussions with wood furniture coaters in Clark and Floyd Counties, Indiana has determined that an overall control efficiency of 32% is a more accurate estimate. The rule effectiveness is assumed to be 80%. An emission reduction claim of 2,445 lbs VOC/day from this rule is acceptable.

Federal AIM Coatings Rule

Pursuant to section 183(e) of the Act, EPA proposed on June 25, 1996 (61 FR 32729) a national rule requiring manufacturers of AIM coatings to meet certain VOC content limitations. The March 7, 1996, EPA memorandum "Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule" allows States to take credit for a 20% reduction in AIM coating emissions, even though promulgation of the rule has been delayed. Based on this policy, Indiana has claimed 750 lbs VOC/day in emission reduction, which is acceptable.

Automobile Refinishing Rule

SIP rule 326 IAC 8–10 requires automobile and mobile equipment refinishing shops to use lower VOC coatings, less-emitting spray-gun and spray-gun cleaning equipment, and improved work practices to reduce VOC. To improve rule effectiveness, this rule also requires refinishing coating suppliers in the area to sell only coatings which meet the VOC limits required in the rule. In addition to documentation contained in the submittal, Indiana submitted supplemental documentation which indicates that an overall 77.8% emission reduction can be expected from all the control measures required by this rule, with 100% rule effectiveness. The emission reduction claimed for this rule, 1,172 lbs VOC/day, is acceptable.

Low RVP Gasoline (7.8 PSI) Rule

SIP rule 326 IAC 13–3 requires gasoline sold in Clark and Floyd Counties to comply with a 7.8 RVP standard during the ozone season. Although this rule regulates RVP, it is not an RVP rule promulgated by the Administrator before enactment, nor required to be promulgated under section 211(h). Therefore, this rule is creditable under section 182(b)(1)(D). MOBILE5a was used to estimate that the emission reductions attributable to this requirement are 3,800 lbs VOC/day from mobile sources, and 787 lbs VOC/day from area sources, respectively. This emission reduction claim is acceptable.

Improved I/M Program

Many states have claimed emission reductions from improvements to pre-existing I/M programs in their 15% ROP plans because such improvements achieve more VOC emission reductions than most, if not all other, control

strategies. For many States, however, actual emission reductions from these improvements will not occur until after 1996. This is due to the substantial amount of time needed to re-design I/M programs in response to the September 18, 1995, revisions to EPA's I/M regulations (60 FR 48029) and/or the enactment of the National Highway Systems Designation Act of 1995 (NHSDA), to secure State legislative approval when necessary, and to set up the infrastructure to perform the testing program.

Given the heavy reliance by many States on upgrading I/M to help satisfy 15% ROP plan requirements, and the recent NHSDA and regulatory changes regarding I/M, EPA has recognized that it is not possible for many States to achieve emission reductions attributable to I/M improvements by November 15, 1996. Under these circumstances, disapproval of the 15% ROP plan SIPs would serve no purpose. Consequently, under certain circumstances, EPA will allow States that pursue re-design of their I/M program to receive emission reduction credit for their 15% ROP plans, even though the emission reductions from I/M will occur after November 15, 1996.

Specifically, the EPA will approve a 15% ROP SIP if the emission reductions from a revised I/M program, as well as from the other 15% ROP plan measures, will achieve the 15% level as soon after November 15, 1996, as practicable. To make this "as soon as practicable" determination, the EPA must determine that the 15% ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. The EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

Revisions to Clark and Floyd Counties' I/M program (326 IAC 13–1.1) were approved by EPA on March 19, 1996 (61 FR 11142). The State's I/M contract requires that testing vehicles under the improved program begin in July 1997. A single contractor, Envirotest, Inc., operates a test-only centralized network for inspections and re-inspection. The Indiana I/M program requires coverage of all 1976 and newer gasoline powered light duty passenger cars and light duty trucks up to 9,000 pounds Gross Vehicle Weight Rating (GVWR). The State's program requires that all applicable 1981 and newer vehicles meet a transient, mass emissions tailpipe test that includes the purge and pressure test. All applicable model year 1976 through 1980 vehicles will be subject to a BAR90 single-speed idle test that includes the pressure test.

EPA has analyzed Clark and Floyd Counties' improved I/M program to predict when the emission reductions claimed in the 15% ROP plan for the improvements will actually be secured. This analysis was based on the methodology specified in EPA's policy memoranda, "Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation," August 13, 1996, and "Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance," December 23, 1996. MOBILE5b runs were used to evaluate the credit, using inputs that reflect actual program startup. Some of the input parameters of the modeling included: a July 1997, program start date; start-up cutpoints as recommended by EPA; and expected evaporative test procedures available at start-up. The State has taken credit in the Clark and Floyd Counties 15% ROP plan for 2,200 lbs VOC/day reductions from improvements in I/M. Based on EPA's analysis, the emission reduction claimed will be secured by November 1999. (See EPA's August 13, 1996, policy memorandum titled "Date by Which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation," for further discussion on the acceptability of the November 1999 date).

To determine whether there are other available potential control measures which can meaningfully accelerate the date by which 15% emission reduction in Clark and Floyd Counties can be achieved, EPA compared the Clark and Floyd Counties 15% ROP plan with control measures included in 15% ROP plans nation-wide, which are listed in EPA's report, "Sample City Analysis: Comparison of Enhanced I/M Reductions Versus other 15 Percent ROP Plan Measures," December 12, 1996, referenced in EPA's policy document "15% VOC SIP Approvals and the 'As Soon As Practicable' Test," February 12, 1997. Based upon the report, EPA believes that there are no other potential control measures beyond those already included in the Clark and Floyd 15% ROP plan which can secure a significant amount of emission reduction before November 1999.

Because Indiana's improved I/M program will secure emission reductions claimed under the Clark and Floyd Counties 15% ROP plan by November 1999, and there are no other potential control measures which can meaningfully accelerate the achievement of 15% reduction in the counties before November 1999, the EPA finds that the Clark and Floyd Counties 15% ROP plan does secure 15% emission reductions as soon as practicable. On this basis, the emission reduction claimed under Clark and Floyd Counties' 15% ROP plan for improved I/M is approvable.

Commuter Credits, Kentucky Motorists

The 1990 base year inventory includes emissions from VMT driven in Clark and Floyd Counties by Louisville, Kentucky, motorists. Two post-1990 control measures implemented in Louisville have reduced emissions from these motorists: reformulated gasoline and I/M pressure checks. MOBILE5a was used to estimate the emission reduction in Clark and Floyd Counties associated with these control measures, and the input and output files are included in the SIP submittal. The emission reduction claimed from this program, 700 lbs VOC/day, is acceptable.

Ridesharing Program

The Clark and Floyd Counties 15% ROP plan takes credit for a ridesharing program, called the "Commuter Pool," which affects commuters in Clark and Floyd Counties. The Commuter Pool program provides companies and employees with technical and financial assistance in implementing car-pool and van-pool commuting arrangements. The program covers the entire Louisville metropolitan area and is administered by the Kentuckiana Regional Planning and Development Agency (KIPDA), the Metropolitan Planning Organization (MPO) for the area. The program is programmed and funded in the Louisville metropolitan area's Horizon 2020 Transportation Improvement Plan and fiscal year (FY) 1997–2000 Transportation Improvement Program (TIP). The rideshare program is partly funded through the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).[4]

To demonstrate emission reductions achieved by this program in Clark and Floyd Counties, Indiana submitted an air quality analysis from KIPDA which was developed using a similar methodology used to evaluate the FY 1994–1997 TIP for the Louisville metropolitan area. As part of this analysis, KIPDA isolated the impacts of the ridesharing program on roadways in Clark and Floyd Counties regardless of

[4] MPOs can utilize United States Department of Transportation (DOT) funds from CMAQ. CMAQ is a federal program which provides funding for transportation related projects and programs designed to contribute to attainment of air quality standards.

whether employment locations are based in Indiana or Kentucky. This impact is estimated to be an emission reduction of 55 lbs VOC/day.

This program was submitted with the Clark and Floyd 15% ROP plan as a transportation control measure (TCM) to be included in the SIP. EPA is, in today's action, approving the TCM as a SIP revision (see section V of the rulemaking). The TCM has been implemented since 1994 and was initially programmed and funded in the Louisville metropolitan area 1994–1997 TIP. This program's continued operation will be ensured through federal transportation conformity requirements. The emission reduction claimed from the program is acceptable.

Stage II Gasoline Vapor Recovery Rule

SIP rule 326 IAC 8–4–6 requires facilities that sell more than 10,000 gallons of gasoline per month to operate Stage II gasoline vapor recovery systems certified to have a control effectiveness of at least 95%. Indiana has estimated that the rule has an 84% program in-use efficiency, accounting for annual inspection program effects and the exemption of facilities with a monthly gasoline throughput of less than 10,000 gallons. The State's emission reduction claim of 2,290 lbs VOC/day from this rule is acceptable.

Residential Open Burning Rule

Under SIP rule 326 IAC 4–1, residential open burning is banned in Clark and Floyd Counties. Indiana estimated that this rule would reduce open burning emissions by 80%, or 704 lbs VOC/day, which is acceptable.

MSW Landfill Rule

SIP rule 326 IAC 8–8 applies to new and existing MSW landfills emitting greater than 55 tons of non-methane organic compounds per year and with a minimum design capacity of 100,000 megagrams of solid waste. The rule requires the operation of a landfill gas collection system and combustion device. Based on a destruction efficiency of 98% and collection efficiencies ranging from 50% to 60%, Indiana estimated that an overall VOC emission control efficiency range of 49% to 59% may be achieved, with a rule effectiveness of 80%. The State has claimed 345 lbs VOC/day in emission reduction from this rule, which is acceptable.

Rhodes Construction Permits

Rhodes, located in Charlestown, Clark County, operates a heatset web offset printing operation. In 1990, the source was emitting approximately 125 tons of VOC per year after controls. Beginning in October 15, 1991, Rhodes began a series of replacements and new installation of presses. Rhodes has been issued three construction permits, CP 019–2110, CP 019–2696, and CP 019–4362, in accordance with 326 IAC 2–1–3, to replace and install presses. These permits require Rhodes to improve its VOC emission control by installing and operating two thermal incinerators with a 98% VOC destruction efficiency to control ink emissions from all presses in the plant.

Indiana estimated emission reductions from the VOC control improvements using a July 1, 1994, report submitted by Rhodes to IDEM pursuant to the State's emission statement program.[5] This report was based upon stack test data with one of the new thermal incinerators in operation. IDEM inspectors quality assured the report and found it acceptable. Using software designed to calculate annual emissions from data submitted under the emission statement program, IDEM determined that in 1994 Rhodes was emitting 13.5 tons of VOC per year after controls, representing a 111.5 ton VOC/year reduction from 1990 levels. IDEM used an EPA conversion equation (to account for emissions per summertime day) to determine that the new controls at Rhodes have reduced emissions by 771 lbs VOC/day.

Indiana submitted the Rhodes construction permits with the Clark and Floyd Counties 15% ROP plan and claimed a 661 lbs VOC/day emission reduction from the permits. In today's action, EPA is approving the Rhodes construction permits as revisions to the Indiana ozone SIP (see section V of this rulemaking action). It should be noted that Indiana's 15% ROP plan submittal states the total reduction from Rhodes as 865 lbs VOC/day. However, IDEM has subsequently indicated to EPA that the emission reduction from Rhodes which should have been claimed in the submittal is 771 lbs VOC/day. In today's action, EPA is approving an 771 lbs VOC/day emission reduction which can be credited toward ROP. Since Indiana claimed 661 lbs VOC/day in emission reduction from Rhodes in the 15% ROP plan submittal, the remaining 110 lbs/day can be used toward meeting Clark and Floyd Counties' attainment demonstration or contingency plan requirements.

E. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act, and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from the Assistant Administrator for Air and Radiation (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C) of the Act].

The control measures included in the Clark and Floyd Counties 15% ROP plan have been fully adopted by Indiana and have been submitted to EPA as a revision to the State's ozone SIP. The EPA has independently reviewed each control measure to determine conformance with SIP requirements under section 110 and part D of the Act, and the measure's overall enforceability. Rulemaking action on each control measure is as follows:

Control measure	Date of EPA approval
VOL Storage Vessel Rule (326 IAC 8–9)	January 17, 1997 (62 FR 2593)
Shipbuilding and Ship Repair Rule (326 IAC 8–12).	January 22, 1997 (62 FR 3216)
Wood Furniture Coating Rule (326 IAC 8–11)	October 30, 1996 (61 FR 55889)
Federal Architectural and Industrial Maintenance Coatings Rule.	Proposed federal regulation for which Indiana can take credit (See March 7, 1996, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards to Regional Division Directors).
Automobile Refinishing Rule (326 IAC 8–10)	June 13, 1996 (61 FR 29965)

[5] Indiana's emission statement program (326 IAC 2–6) was adopted pursuant to section 182(a)(3)(B) of the Act. Under this program, owners and operators of stationary sources of VOC or oxides of nitrogen (NO_x) are required to provide annual statements, in a format required under 326 IAC 2–6, showing actual emissions of NO_x and/or VOC from the sources. EPA approved Indiana's emission statement program on June 10, 1994 (59 FR 29953).

Control measure	Date of EPA approval
Low RVP Gasoline Rule (326 IAC 13–3)	February 9, 1996 (61 FR 4895)
Improved Basic I/M (326 IAC 13–1.1)	March 19, 1996 (61 FR 11142)
Commuter Credits, Kentucky Motorists	February 16, 1994 (59 FR 7716) (Federal reformulated gasoline) July 28, 1995 (60 FR 38700) (Louisville Hybrid I/M)
KIPDA Ridesharing Program	Date of EPA approval action is date of today's **Federal Register**. See discussion below.
Stage II Vapor Recovery (326 IAC 8–4–6)	April 28, 1994 (59 FR 21942)
Residential Open Burning Ban (326 IAC 4–1)	February 1, 1996 (61 FR 3581)
Municipal Solid Waste Landfills (326 IAC 8–8)	January 17, 1997 (62 FR 2591)
Rhodes Construction Permits	Date of EPA approval action is date of today's **Federal Register**. See discussion below.

F. Transportation Conformity 1996 Mobile Source Emissions Budget

Section 176(c) requires States to submit SIP revisions establishing the State's criteria and procedures for assessing the conformity of federal actions (transportation and general) to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards. These conformity SIP revisions must assure that federal actions will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. To assure conformity with the SIP, conformity analyses for transportation projects must take into account the amount of on-road mobile source emissions that can be emitted in accordance with SIP emission reduction milestones. For purposes of EPA transportation conformity determinations, the 1996 emission level for on-road mobile sources that is achieved from the 15% ROP plan constitutes the 1996 VOC mobile source emission budget for Clark and Floyd Counties. This level, which is derived from MOBILE5a using 1996 estimated emissions with improved I/M, 7.8 low RVP, and Kentucky commuter credits, is 17,340 lbs VOC/day. Therefore, final approval of the 15% ROP plan also approves the 1996 mobile source VOC emission budget.

For years after 1996, conformity determinations addressing VOCs must demonstrate consistency with this plan revision's motor vehicle emissions budget, and satisfaction of the build/no-build test, as defined under 40 CFR part 93.

G. Conclusion

The EPA has reviewed the Clark and Floyd Counties 15% ROP plan SIP revision submitted to EPA as described above, and finds that the plan satisfies the applicable requirements of the Act, as well as EPA guidance for such plans. Therefore, the EPA, in this action, is approving these plans as a revision to the Indiana ozone SIP.

V. Other Rulemaking Actions

A. Corrections to 1990 Base Year Emissions Inventory

Corrections for Clark and Floyd Counties 1990 base year emissions inventory were submitted as Appendix B in the 15% ROP plan submittal. In today's action, EPA is approving the revised 1990 base year emissions inventory as a revision to the SIP. The following table explains the revisions:

REVISIONS TO CLARK AND FLOYD COUNTIES' 1990 BASE-YEAR EMISSION INVENTORY

Sources affected	Explanation of changes
Service station tank breathing area sources.	Controlled emissions from service station tank breathing were erroneously included in the 1990 base year emissions inventory and have now been removed.
Ashland	Ashland has submitted corrected 1990 base year emissions for its point sources.
Rhodes	Rhodes was not included in the 1990 base year emissions inventory. Emissions from the source have now been added.
Louisville Hardwoods, Inc	Because Louisville Hardwoods' 1990 emissions were less than the 10 tons VOC/year point source inventory cut off, the source's emissions have been shifted from the point source inventory to the area source inventory.

B. Ridesharing Program

Included as a requested SIP revision in the Clark and Floyd 15% ROP plan submittal is a ridesharing program, called the Commuter Pool, affecting commuters in Clark and Floyd Counties. The Commuter Pool program provides companies and employees in the Louisville metropolitan area (including Clark and Floyd Counties) with technical and financial assistance in implementing car-pool and van-pool commuting arrangements.

To take credit for the ridesharing program, the program must be approved by EPA as a Transportation Control Measure (TCM) and incorporated in the SIP. EPA's requirements for TCMs are summarized in the June 1993, EPA guidance document, *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* The required elements are (1) A complete description of the measure, and, if possible, its estimated emissions reduction benefits; (2) evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure; (3) evidence that funding will be available to implement the measure; (4) evidence that all necessary approvals have been obtained from all appropriate government offices; (5) evidence that a complete schedule to plan, implement, and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

The Commuter Pool program, as submitted by Indiana in the Clark and Floyd 15% ROP plan submittal, fully satisfies TCM requirements based on the following: (1) A complete description of the program and estimated emission reduction are provided in the documentation submitted with the ROP plan; (2) the measure has been adopted

by KIPDA, the authorized MPO for Louisville; (3) the program is currently operating and has received federal CMAQ program money for operation; (4) all necessary approvals have been obtained from DOT on the FY 1997–2000 TIP and Horizon 2020 Transportation Plan (which includes the TCM); (5) the Transportation Plan and TIP constitute the schedule, implementation mechanism, and also the enforcement mechanism for the TCM (the conformity provisions in 40 CFR part 93 provide that TCMs in an approved SIP must be implemented on schedule before a conformity determination can be made by DOT); and (6) the CMAQ program requires monitoring of programs funded under CMAQ and annual reports to DOT on achieved emission reductions. The Commuter Pool TCM, therefore, is approvable.

C. Rhodes Permits

Rhodes' heatset web offset printing operations are subject to three construction permits issued under 326 IAC 2–1 of the Indiana rules. The construction permits are CP 019–2110, CP 019–2696, and CP 019–4362, issued October 15, 1991, December 18, 1992, and April 21, 1995, respectively. These permits were submitted with the Clark and Floyd 15% ROP plan as a revision to the SIP.

Under the construction permits, Rhodes must not operate its presses unless the incinerators are functioning properly. Each incinerator must meet a 98% VOC destruction efficiency, and must maintain a combustion temperature at or above 1400 degrees Fahrenheit (760 degrees Celsius) to ensure continuous compliance with the destruction efficiency. The plant must meet a VOC capture efficiency of 86%, assuring an overall efficiency of 84% minimum. Rhodes was required to conduct an initial compliance stack test for each incinerator. Daily record keeping of the incinerators' minimum operating inlet temperature and minimum duct velocity must be kept for at least two years. Exceedances must be reported to IDEM.

These permits are being approved in today's action as revisions to the Indiana ozone SIP.

VI. Final Rulemaking Action

The EPA approves Indiana's 15% ROP plan for Clark and Floyd Counties as a revision to the SIP. For transportation conformity purposes, final approval of this 15% ROP plan also approves the 1996 mobile source emission budget of 16,785 lbs VOC/day. EPA also approves corrections to Clark and Floyd Counties 1990 base year emissions inventory, the Rhodes permits, and the ridesharing program TCM included in the 15% ROP submittal.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on July 7, 1997 unless, by June 6, 1997, adverse or critical comments on the approval are received.

If the EPA receives adverse comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 7, 1997.

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

VII. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

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

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: April 16, 1997.

William E. Muno,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(118) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(118) On July 12, 1995, Indiana submitted as a revision to the State Implementation Plan construction permits CP 019–2110, CP 019–2696, and CP 019–4362, issued under Indiana rule 326 IAC 2–1. The permits establish volatile organic compound control requirements for Rhodes Incorporated's heatset web offset printing presses.

(i) Incorporation by reference. Construction Permit CP 019–2110, issued and effective October 15, 1991; Construction Permit CP 019–2696, issued and effective December 18, 1992; Construction permit CP 019–4362, issued and effective April 21, 1995.

3. Section 52.777 is amended by adding paragraph (m) to read as follows:

§ 52.777 Control Strategy: Photochemical Oxidants (hydrocarbon).

* * * * *

(m) On July 12, 1995, Indiana submitted a 15 percent rate-of-progress plan for the Clark and Floyd Counties portion of the Louisville ozone nonattainment area. This plan satisfies Clark and Floyd Counties' requirements under section 182(b) of the Clean Air Act, as amended in 1990.

4. Section 52.777 is amended by adding paragraph (n) to read as follows:

§ 52.777 Control Strategy: Photochemical Oxidants (hydrocarbon).

* * * * *

(n) On July 12, 1995, Indiana submitted corrections to the 1990 base year emissions inventory for Clark and Floyd Counties. The July 12, 1995, corrections are recognized revisions to Indiana's emissions inventory.

5. Section 52.777 is amended by adding paragraph (o) to read as follows:

§ 52.777 Control Strategy: Photochemical Oxidants (hydrocarbon).

* * * * *

(o) On July 12, 1995, Indiana submitted as a revision to the Indiana State Implementation Plan a ridesharing transportation control measure which affects commuters in Clark and Floyd Counties.

[FR Doc. 97–11908 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[UT–001–0003a; FRL–5818–6]

Clean Air Act Approval and Promulgation of State Implementation Plan; UT; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State Implementation Plan (SIP) revision submitted by the State of Utah with a letter dated November 20, 1996. The submittal included the State adoption of a new rule, R307–18–1, which incorporates by reference the Federal new source performance standards (NSPS) in 40 CFR part 60, as in effect on March 12, 1996. EPA is approving the State's submittal because it is consistent with the requirements of the Clean Air Act, as amended (Act).

DATES: This action will become effective on July 7, 1997, unless comments are received in writing by June 6, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Division of Air Quality, Utah Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114–4820; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan or plan revision submitted by a State must be adopted after reasonable notice and public hearing. In accordance with the completeness criteria in 40 CFR part 51, appendix V, EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Utah, after providing adequate notice, held a public hearing on July 16, 1996 on the proposed revision to the Utah Air Conservation Regulations. Following the public hearing, the State adopted the rule revision on September 9, 1996. The Governor of Utah submitted the SIP revision on November 20, 1996, and supporting documentation was submitted by the Director of the Utah Division of Air Quality on December 2, 1996. The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete and a letter dated March 28, 1997 was forwarded to the Governor finding the submittal complete.

B. This Action

The State of Utah adopted a new rule, R307–18–1, which incorporates by reference the Federal NSPS in 40 CFR part 60, as in effect on March 12, 1996. The State had previously relied on Utah Air Conservation Regulations R307–1–1 and R307–1–3.1.8.B. to provide authority for implementation and enforcement of the NSPS. Under these

provisions, the State had authority to implement and enforce new and revised NSPS as soon as such standards were promulgated by EPA. Accordingly, EPA provided automatic delegation of each new and revised Federal NSPS to the State of Utah (see 49 FR 36369, September 17, 1984). However, with the State's adoption of R307–18–1, which only incorporates by reference the Federal NSPS as in effect on March 12, 1996, the State no longer has authority to receive automatic delegation. Consequently, EPA is rescinding the automatic delegation of NSPS to Utah. In order for the State to have authority to implement and enforce Federal NSPS that are adopted or revised after March 12, 1996, the State will need to go through State rulemaking to adopt those standards and request EPA approval.

In addition to incorporating by reference the Federal NSPS in 40 CFR part 60 as of March 12, 1996, R307–1–18 provides that the term "administrator," as it is used in 40 CFR part 60, shall mean the Executive Secretary of the Utah Air Quality Board unless such authority cannot be delegated to the State by EPA. EPA finds that R307–1–18 is consistent with the Federal NSPS regulations in 40 CFR part 60 and, therefore, is approvable.

II. Final Action

EPA is approving Utah's SIP revision, as submitted by the Governor on November 20, 1996, of the new Utah Air Conservation Regulation R307–1–18, which incorporates by reference the Federal NSPS in 40 CFR part 60 as in effect on March 12, 1996. Since the State no longer has authority to implement and enforce new and revised Federal NSPS as soon as promulgated, EPA is rescinding its automatic delegation of NSPS that had been previously granted to Utah.

This approval provides the State with the authority to implement and enforce all Federal NSPS in 40 CFR part 60 as in effect on March 12, 1996. However, the State's NSPS authority does not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60 and EPA policy.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 7, 1997 unless, by June 6, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 7, 1997.

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting recordkeeping requirements.

40 CFR Part 60

Environmental protection, Air pollution control.

Dated: April 18, 1997.

Jack W. McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(37) On November 20, 1996, the Governor of Utah submitted a revision to the Utah State Implementation Plan. The submittal included a new Utah regulation which incorporates by reference the Federal new source performance standards in 40 CFR part 60, as in effect on March 12, 1996.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, R307–18–1, "Standards of Performance for New Stationary Sources (NSPS)," effective September 9, 1996, printed October 19, 1996.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

Subpart A—General Provisions

2. In § 60.4(c), the table for "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]" is amended by adding to the end of the table an entry for "WWW—Municipal Solid Waste Landfills" to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

	SUB-PART	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
* * * *							
WWW Municipal Solid Waste Landfills						(*)	

[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).
(*) Indicates approval of State regulations.

[FR Doc. 97–11913 Filed 5–6–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA036–4060; FRL–5819–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation, Maintenance Plan, and Emissions Inventories for Reading; Ozone Redesignations Policy Change

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request for the Reading, Pennsylvania ozone nonattainment area, and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions consist of a maintenance plan and 1990 base year inventories for the Reading area (Berks County, Pennsylvania). In addition, for the purposes of redesignation, EPA is proposing to approve Pennsylvania's legislative authority to adopt and implement a vehicle inspection and maintenance program. These actions are being taken under sections 107 and 110 of the Clean Air Act. Furthermore, EPA is changing its policy on redesignation requirements for ozone nonattainment areas in the Ozone Transport Region (OTR). The policy change makes redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting meeting the requirements under section 184 of the Clean Air Act as not being a prerequisite for the purpose of redesignation. The policy does not affect obligations required under other sections of the Act.

EFFECTIVE DATE: This final rule is effective on June 6, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566–2181, at the EPA Region III office address listed above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On October 10, 1996 (61 FR 53174), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the redesignation request, maintenance plan, and 1990 volatile organic compound (VOC), oxides of nitrogen (NO_X), and carbon monoxide (CO) base year inventories for the Reading area, contingent upon Pennsylvania's correction of all deficiencies contained in the maintenance plan and

inventories. In that same **Federal Register** document, EPA also proposed, in the alternative, to disapprove the redesignation request, maintenance plan, and base year inventories for the Reading area, if Pennsylvania does not correct the deficiencies. In addition, for the purposes of redesignation, EPA proposed approval of Pennsylvania's legislative authority to adopt and implement a vehicle inspection and maintenance program. Finally, EPA proposed a change in its policy on redesignation requirements for ozone nonattainment areas in the OTR.

Public comments were received on the Notice of proposed rulemaking (NPR), and are addressed below in the **Response to Comments** section of this document.

Background

Pennsylvania formally requested that EPA redesignate the Reading area on November 12, 1993. Pennsylvania submitted the maintenance plan and 1990 VOC, NO_X, and CO base year inventories for the Reading ozone nonattainment area as formal SIP revisions on November 12, 1993. Pennsylvania amended the maintenance plan on January 13, 1994 and May 12, 1995. Most recently, Pennsylvania submitted a revised maintenance plan and revised inventories on January 28, 1997.

On October 10, 1996, EPA published a proposed approval of the redesignation request, maintenance plan, and inventories, contingent upon Pennsylvania correcting deficiencies identified in its submittals (61 FR 53174). On January 28, 1997, Pennsylvania submitted a maintenance plan and 1990 base year inventories for the Reading area, which completely supersede the previous submittals and address the requirements of EPA's proposed approval.

As stated in EPA's proposed approval of the Reading area redesignation request, maintenance plan, and 1990 base year inventories (61 FR 53174), in order to correct the deficiencies that exist in the redesignation request, maintenance plan, and 1990 base year emission inventories, Pennsylvania was required to submit the following to EPA by February 3, 1997:

(1) Adequate technical support to justify the projected emission inventories (2007 and 2004), including growth factors (not surrogates), sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs;

(2) Technical support to justify the 1990 base year emission inventories submitted in the redesignation request. This support must include sample calculations for point, area, and mobile sources, a list of all point sources, and mobile source emissions modeling;

(3) Complete and approvable reasonably available control technology (RACT) SIP revisions for all applicable sources (all VOC and NO_X sources with the potential to emit 100 tons per year (TPY) or more in the Reading area);

(4) A declaration that all required RACTs have been submitted; and

(5) SIP revisions to the Reading area maintenance plan so that it provides adequate contingency measures. The plan must contain a list of measures to be adopted and a schedule and procedures for adoption and implementation. The plan must also identify specific triggers used to determine when the contingency measures need to be implemented and a schedule for implementation of the contingencies in the event that they are implemented. The list of contingency measures must include a basic vehicle inspection and maintenance (I/M) program, in the event that enhanced I/M requirement under section 184 is not implemented. The plan must contain a schedule for implementation of a basic I/M program that complies with 40 CFR 51.372(c)(4). This schedule will be triggered when Pennsylvania chooses to implement basic I/M as a contingency measure.

EPA's Evaluation of Pennsylvania's January 28, 1997 SIP Submittal

EPA has determined that Pennsylvania's January 28, 1997 SIP submittal has adequately addressed the five requirements listed above, and thereby corrected all deficiencies that previously existed in Pennsylvania's maintenance plan and 1990 VOC, NO_X, and CO inventories for the Reading ozone nonattainment area. A brief description of how Pennsylvania's submittal addresses the five requirements is provided below.

(1) Projected Emission Inventories

Pennsylvania's January 28, 1997 revision to the maintenance plan for the Reading area includes adequate technical support to justify the projected emission inventories (2007 and 2004), including growth factors (not surrogates), sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs.

(2) 1990 Base Year Emission Inventories

Pennsylvania's revised maintenance plan for the Reading area contains adequate technical support to justify the 1990 base year emission inventories for the Reading area. The support materials include sample calculations for point, area, and mobile sources, a list of all point sources, and mobile source emissions modeling.

Pennsylvania developed an attainment emissions inventory, for the year 1992, to identify the level of emissions sufficient to achieve the ozone standard. The revised maintenance plan contains comprehensive inventories for the 1990 base year, as well as the years 1992, 2004 and 2007, prepared according to EPA guidance for ozone precursors, VOCs, NO_X, and CO emissions to demonstrate attainment and maintenance. The inventories include area, stationary, non-road mobile and mobile sources. The 1992 inventory is considered representative of attainment conditions because the standard was not violated during 1992, and because that year was one of the three years upon which the attainment demonstration was based. The plan includes a demonstration that emissions will remain below the 1992 attainment year levels for a 10 year period (2007) and provides an interim-year inventory, as required by EPA guidance, for the year 2004. Pennsylvania has demonstrated that emissions for ozone precursors through the year 2007 will remain below the 1992 attainment year levels because of permanent and enforceable measures, while allowing for growth in population and vehicle miles traveled (VMT).

The following table summarizes the average peak ozone season weekday VOC, NO_X, and CO emissions for the major anthropogenic source categories for the 1990 base year inventory, the 1992 attainment year inventory, and the projected 2004 and 2007 inventories for the Reading area.

Emissions (tons per day)	1990	1992	2004	2007
VOCs				
Point sources	12.41	12.01	11.73	12.03
Area sources	25.96	25.13	21.47	20.96

Emissions (tons per day)	1990	1992	2004	2007
Mobile sources	25.29	22.59	19.36	19.00
Total	63.66	59.73	52.56	51.99
NO_X				
Point sources	25.60	25.20	21.65	22.40
Area sources	2.63	2.65	2.78	2.82
Mobile sources	29.54	28.78	25.57	25.43
Total	57.77	56.63	50.00	50.65
CO				
Point sources	9.12	8.55	7.83	7.71
Area sources	2.65	2.66	2.74	2.76
Mobile sources	252.74	225.22	165.52	166.20
Total	264.51	236.43	176.09	176.67

(3) RACT

Pennsylvania has submitted RACT SIP revisions for all major sources subject to RACT in the Reading area. At the time of EPA's proposed approval, on October 10, 1996, EPA had identified four sources for which Pennsylvania was required to submit RACT SIPs. Subsequently, EPA identified a fifth source as being subject to RACT. However, Pennsylvania's revision to the Reading area maintenance plan indicates that two of these sources are subject to federally enforceable state operating permit conditions that limit their potential emissions to less than 100 tons per year NO_X. Therefore, EPA considers these sources to be no longer subject to RACT.

On March 20, 1997, Pennsylvania withdrew the NO_X portion of its RACT SIP revision for Lucent Technologies (AT&T)—Reading. This source is subject to federally enforceable state operating permit conditions that limit its potential emissions to less than 100 tons per year NO_X. Therefore, EPA considers this source to be subject to VOC RACT, but not NO_X RACT.

Pennsylvania submitted RACT SIP revisions for the newly identified source on January 21, 1997. Pennsylvania submitted RACT SIP revisions for the remaining two RACT sources on January 28, 1997.

Furthermore, as shown in the following tables, EPA has approved all RACT SIPs for the Reading area. Thus, Pennsylvania has fulfilled its moderate area RACT obligation under section 182 for the Reading area.

SOURCE	Pennsylvania submittal date	EPA approval signature	EPA approval publication
VOC RACT			
W.R. Grace and Co.—FORMPAC Div	9/20/95	4/19/96	5/16/96 62 FR 24706
Glidden Co.—Reading	6/10/96	4/1/97	4/18/97
Garden State Tanning, Inc.—Fleetwood	8/1/95	4/1/97	4/18/97
Brentwood Industries, Inc.—Reading	5/2/96	3/31/97	4/18/97
Metropolitan Edison Co. (MetEd)—Titus	3/27/95	3/31/97	4/18/97
Lucent Technologies (AT&T)—Reading	8/1/95	4/1/97	4/18/97
Morgan Corp.—Morgantown	11/15/95	3/31/97	4/18/97
Quaker Maid (Schrock Cabinet Group)	5/2/96	3/31/97	4/18/97
North American Fluoropolymers Co.	3/21/96	3/31/97	4/18/97
Maier's Bakery—Reading	11/15/95	3/31/97	4/18/97
NO_X RACT			
Metropolitan Edison Co (MetEd)—Titus	3/27/95	3/31/97	4/18/97
Allentown Cement Co, Inc.—Evansville	11/15/95	3/31/97	4/18/97
Texas Eastern Transmission Corp.—Bechtelsville	1/28/97	3/31/97	4/18/97
Texas Eastern Transmission Corp.—Bernville	2/3/97	3/31/97	4/18/97
Carpenter Technology Corp.—Reading	1/21/97	3/31/97	4/18/97
Carpenter Technology Corp.—Reading	1/21/97	3/31/97	4/18/97

(4) RACT Declaration

In the cover letter for Pennsylvania's January 28, 1997 submittal, which transmitted amendments to its maintenance plan and 1990 base year inventories for the Reading area, Pennsylvania stated that all required RACTs for the Reading area "will be submitted by February 3, 1997." In fact, all required RACT SIPs were submitted to EPA as SIP revisions by January 28, 1997.

(5) Contingency Measures

Pennsylvania has revised the maintenance plan for the Reading area to include appropriate triggers for its contingency measures. When the contingency plan is triggered, Pennsylvania has committed to adopt within one year, or as expeditiously as practicable, one or more contingency measures. The contingency measures will be triggered if the area experiences a violation of the ozone standard. In addition, Pennsylvania will develop a periodic inventory every 3 years. If a periodic inventory exceeds the attainment year inventory (1992) by 10 percent or more, Pennsylvania will evaluate the control measures to see if any contingency measure should be implemented. Finally, a contingency measure can be triggered if the Reading area experiences an exceedance of the ozone standard.

Pennsylvania's revised maintenance plan for the Reading area includes, as a contingency measure, the low enhanced I/M program that Pennsylvania submitted to EPA on March 22, 1996. Pennsylvania submitted this low enhanced program under the November 28, 1995 National Highway System Designation Act (NHSDA). EPA's final conditional interim approval of the Pennsylvania's I/M program was published in the **Federal Register** on January 28, 1997 (62 FR 4004). Pennsylvania estimates that this program will result in a VOC emission reduction of 1.5 tons per day and a NO_x emission reduction of 0.2 tons per day in the Reading area. It should be noted that, although it has been listed as a contingency measure, Pennsylvania intends to fully implement this low enhanced program by November 15, 1999. EPA considers the *actual* implementation of low enhanced I/M in the Reading area to be environmentally better than a contingency measure that *may* be implemented, if the contingency plan is triggered.

Pennsylvania's revised maintenance plan for the Reading area includes, as a second contingency measure, improved rule effectiveness. In the contingency plan, Pennsylvania has included a list of rule effectiveness matrix activities that Pennsylvania intends to implement to achieve enhance rule compliance, and a schedule for implementation of these activities. Facilities that fall under the Standard Industrial Classification (SIC) codes 26, 27, 30, 31, 34, and 51 will be effected by this contingency measure, should it be triggered. Pennsylvania estimates that this measure, if triggered, would result in a VOC emission reduction of 1.05 tons per day in the Reading area.

Other specific provisions of the maintenance plan and 1990 base year inventories, and the rationale for EPA's action are explained in the NPR and the technical support documents that EPA prepared for this action, and will not be restated here.

Response to Comments

EPA received four comment letters on its proposed approval and proposed disapproval of the Reading area redesignation request, maintenance plan, and 1990 base year inventories. Comments were received from (1) The Berks County Planning Commission (BCPC), (2) The Berks County Board of Commissioners (BCBC) and Berks County Industrial Development Authority (BCIDA), (3) The Pennsylvania Chemical Industry Council (PCIC), and (4) The Clean Air Council (CAC).

Comment #1

BCPC, BCBC, BCIDA, and PCIC support EPA's proposed approval and state that the Commonwealth is in the process of meeting all applicable redesignation criteria for the Reading area. They also assert that the fact that the Reading area has met the ozone standard since 1991 should be the overriding consideration for EPA. BCPC, BCBC, and BCIDA contend that the remaining four redesignation criteria under section 107(d)(3)(E) of the Clean Air Act (the Act) are "secondary requirements." They go on to claim that delaying the redesignation of the Reading area "will prohibit economic growth and development in the Berks County Region."

EPA Response

Under section 107(d)(3)(E) of the Act, all five of the following criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must meet applicable requirements of section 110 and Part D of the Act.
3. The area must have a fully approved SIP under section 110(k) of the Act.
4. The area must show that its experienced improvement in air quality is due to permanent and enforceable measures.
5. The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

The second, third, fourth, and fifth criteria are as important as the first. These four criteria are needed to assure that any improvement in air quality is due to permanent and enforceable measures, and not year-to-year fluctuations in emissions and/or meteorological conditions. They also ensure that the improvement in air quality will be maintained, and any future violations of the ozone standard will be addressed as expeditiously as possible. EPA cannot approve a redesignation request unless all five criteria are met. As stated above, EPA believes that the Reading area has now met all five criteria. Therefore, EPA is approving the Commonwealth's redesignation request and maintenance plan for the Reading area.

Comment #2

BCPC, BCBC, and BCIDA support EPA's proposed policy change that would make redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting meeting the requirements under section 184 of the Act as not being a prerequisite for the purpose of redesignation.

EPA Response

EPA agrees with this comment, for the reasons stated in its proposal and in the further responses to comments set forth below. In addition, EPA notes that, at this time, Pennsylvania has made submissions addressing all of its section 184 requirements for the Reading area, and has received or is awaiting their approval by EPA.

As an alternative ground for approving the Reading area redesignation request, EPA has concluded that, even if the section 184 requirements were somehow deemed "applicable" requirements for purposes of section 107(d)(3)(E), EPA is empowered to create a de minimis exception for them. Because the Reading area does not rely upon them to demonstrate attainment and maintenance, and because these requirements remain in effect after redesignation, EPA has determined that requiring full approval of them prior to redesignation would be of trivial environmental significance. Under *Alabama Power* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979), EPA may establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. Here, EPA finds that there is little or no benefit to insisting that the section 184 requirements be met prior to redesignation, since they remain in force regardless of the area's

redesignation status, and are unrelated to it.

EPA notes, moreover, that the Reading area has already fulfilled most of its obligations under section 184. It has satisfied the RACT requirements. Only two limited aspects of Reading's section 184 requirements are subject to further undertakings; an element of its new source review (NSR) program, and, certain conditions related to its low enhanced I/M program. With respect to I/M, Pennsylvania has obtained final conditional interim approval of its low enhanced I/M program. With respect to NSR, on April 22, 1997, the Regional Administrator of EPA, Region III signed a proposed limited approval of Pennsylvania's February 4, 1994 NSR submittal. EPA has proposed to grant limited approval of this SIP revision because it strengthens the current SIP's NSR requirements, and because it limits the use of prior shutdown credits in a manner that is consistent with EPA's NSR reform rulemaking, which was proposed for approval in the July 23, 1996 **Federal Register**. See 61 FR 38249. This NSR reform rulemaking proposes to lift the current prohibition on the use of prior shutdown credits. The Pennsylvania SIP revision limits, but does not prohibit the use of prior shutdown credits. Current NSR program requirements prohibit the use of prior shutdown credits. However, it is important to note that Pennsylvania's existing NSR SIP rule also does not prohibit the use of prior shutdown credits, and that the Pennsylvania SIP revision is generally consistent with EPA's proposed NSR reform rulemaking. Therefore, EPA has proposed limited approval of this SIP revision based upon the fact that it strengthens the existing SIP's NSR requirements, and upon its conformance with EPA's proposed NSR reform rulemaking. When EPA promulgates the NSR reform rule, it will assess Pennsylvania's SIP for conformance with that promulgated version.

Comment #3

CAC asserts that EPA's proposed policy change that would interpret meeting the requirements under section 184 of the Act as not being a prerequisite for the purpose of redesignation "would flatly contravene section 107(d)(3)(E)," which requires an area to meet all applicable section 110 and part D requirements before it can be eligible for redesignation. CAC further claims that "EPA lacks discretion to pick and choose among those requirements, imposing some and dispensing with others." CAC maintains that "EPA's proposed policy contravenes the Act and must not be adopted," and goes on to state that even if the Commonwealth corrects all the deficiencies listed in EPA's proposed approval of the Reading redesignation request, EPA must still deny the redesignation request, "because the Reading area lacks several SIP elements required by Part D and § 110, including those mandated by §§ 184, 172(c)(9), 182(b)(1)(A)(I), and 176(c)."

EPA Response

As stated in EPA's proposal for this policy change, EPA believes it is reasonable and appropriate to interpret the section 184 requirements as not being applicable requirements for purposes of evaluating a redesignation request, because the requirement to submit these SIP revisions continues to apply to areas in the OTR after redesignation to attainment, and because these control measures are region-wide requirements and do not apply to the Reading area by virtue of the area's nonattainment designation.

With respect to its conclusion that section 184 requirements are inapplicable for purposes of evaluating a redesignation request, EPA has construed applicable requirements as being those that must be satisfied prior to redesignation because they will not remain in force after redesignation, and whose purpose is related to assuring attainment and maintenance of the NAAQS in the area seeking redesignation. EPA has in the past interpreted "applicable requirements" in light of the purposes of the redesignation requirement. The requirements that are applicable for purposes of redesignation are those whose purpose is to assure attainment and maintenance of the NAAQS for the area being redesignated. Section 184 measures are region-wide requirements that do not apply to the Reading area by virtue of its designation. Their purpose is to reduce regional emissions in the OTR, not to assure attainment and maintenance in the area being redesignated.

In addition, the section 184 requirements remain applicable after redesignation, constituting the extra measures that all areas in the OTR, both attainment and nonattainment, must implement to reduce the possibility of transport to areas outside of the area being redesignated. EPA has determined that areas in the OTR, such as the Reading area, may be redesignated whether or not they have met the section 184 requirements at the time of redesignation, since they remain obligated to satisfy them without regard to their designation. Here, the Reading area has met all applicable requirements for redesignation for areas not in the OTR. For areas in the OTR, section 184 requirements will remain in effect after redesignation, and thus redesignation will not have operated to relieve the Reading area of the obligation to meet them. For that reason, and for the reasons set forth in its proposal EPA has determined that the section 184 requirements are not applicable requirements for the purpose of redesignation.

The rationale for this interpretation is in part analogous to that relied upon and unchallenged with respect to conformity requirements and oxyfuels. See Cleveland Notice of Final Rulemaking 61 FR 20467–20468 (May 7, 1996) and Tampa, Notice of Final Rulemaking, 60 FR 62748, 62741 (December 7, 1995). Because redesignation will not allow these requirements to be evaded, it does not undermine their enforcement or the goals of redesignation.

Moreover, as EPA has set forth above, in its response to Comment #2, even if the section 184 requirements were interpreted to be applicable, EPA is empowered to create an exception to these requirements based upon an analysis that shows that they are of de minimis value as a prerequisite to redesignation. This constitutes a separate and independent ground for concluding that the Reading area is entitled to approval of its request for redesignation.

In reaching its conclusions, EPA is not "picking and choosing" among requirements, but making principled interpretations of what constitutes an applicable requirement or valid exception to a requirement, based upon a reading of the statute.

With respect to EPA's reliance on the determination of attainment in finding that the Reading area has met the requirements for redesignation, the grounds for EPA's interpretation of section 182(b)(1)(A)(I) and 172(c)(9) interpretations were set forth in EPA's May 10, 1995 policy and in the **Federal Register** notices approving the redesignation request of Cleveland, Ohio 61 FR 20458 (May 7, 1996) and Salt Lake City, Utah. The policy was upheld in *Sierra Club* v. *EPA*, No. 95–9541 (10th Cir. 1996).

Comment #4

CAC challenges EPA's rationale for its proposed redesignation policy change. In EPA's proposal, the Agency stated that the State remains obligated to adopt section 184 requirements even after redesignation, and would risk sanctions for failure to do so. CAC claims that the

threat of sanctions has not improved the timeliness or quality of SIP revisions submitted by states in the OTR, including Pennsylvania, and that "EPA has seldom followed through" on its threat to impose sanctions in these areas.

EPA Response

EPA contends that a state's obligation under the Act to submit all section 184 requirements, established in the Act to address long-range transport of ozone and ozone precursors, coupled with the threat of sanctions for non-submittal or inadequate submittal, is sufficient to ensure that states will fulfill all requirements, even after an area has been redesignated. This is evidenced in the Reading area, where Pennsylvania is in the process of addressing all applicable section 184 requirements that have due dates prior to Pennsylvania's formal redesignation request for the Reading area.

The argument that redesignation provides the incentive for fulfilling these requirements, while the threat of sanctions is not enough of a disincentive, is not persuasive. First, the purpose of redesignation is not to enforce any particular set of requirements, but rather to assure attainment and maintenance of the NAAQS for the area being redesignated. Second, to the extent that, as a side-effect, redesignation provides an ancillary incentive to meet requirements, that incentive is proportionately reduced where an area remains obligated to meet these requirements. As we have noted, the Reading area remains obligated to fulfill the section 184 requirements after redesignation or faces the threat of sanctions or a SIP call.

The commenter has not shown that obtaining approval for redesignation would result in areas shirking their section 184 responsibilities. As set forth above, Pennsylvania has demonstrated that it does not take these requirements lightly. Pennsylvania has submitted its NSR rules, which have received a limited approval from EPA, pending final issuance of EPA's proposed revision of its NSR rules. Pennsylvania has also received conditional interim approval for its enhanced I/M program. Pennsylvania has made its section 184 submissions for areas in the commonwealth designated attainment, as well as those seeking redesignation, thereby demonstrating its willingness to comply with these requirements even in the absence of any incentive to redesignate. Under these circumstances, disapproving the redesignation request would yield no discernible environmental benefit. Any such benefit would be dependent upon the speculation that denial of redesignation might somehow secure compliance with requirements that have already been substantially completed, and which are enforceable by other means.

Reasonably Available Control Technology (RACT): As stated above, Pennsylvania has fulfilled its moderate area RACT obligation under section 182 for the Reading area by submitting complete and approvable RACT SIPs for all sources of VOC and NO_X with the potential to emit 100 tons per year (TPY) or greater in the area. EPA has approved all of these RACT submittals. Under section 184, Pennsylvania is also obligated to submit RACT SIP revisions for all VOC sources with the potential to emit between 50 and 100 TPY. Only one such source exists in the Reading area, Birchcraft Industries, Inc. This source had the potential to emit 79.2 TPY VOC. However, this source is subject to federally enforceable state operating permit conditions that limit its potential emissions to less than 50 TPY VOC. EPA SIP approved this limit on May 16, 1996 (62 FR 24706). Therefore, EPA considers this source to be no longer subject to RACT. Thus, Pennsylvania has fulfilled its OTR RACT obligation under section 184.

Vehicle Inspection and Maintenance (I/M): On March 22, 1996, Pennsylvania submitted a low enhanced I/M program under the November 28, 1995 NHSDA. EPA's final conditional interim approval of the Pennsylvania's I/M program was published in the January 28, 1997 **Federal Register** (62 FR 4004). Pennsylvania intends to fully implement this low enhanced program by November 15, 1999.

New Source Review (NSR): On February 4, 1994, Pennsylvania submitted its final NSR regulations to EPA. EPA determined that the submittal was complete on February 28, 1994. On April 22, 1997, EPA's proposed limited approval of Pennsylvania's NSR submittal was signed by the Regional Administrator.

Comment #5

CAC contends that EPA's proposed policy change "ignores the rationale offered in the General Preamble" to Title I of the Clean Air Act, which states that an area must meet the applicable requirements of sections 182, 184, and 185 in order to be redesignated (57 FR 13564, April 16, 1992). The General Preamble goes on to say that "contingency measures of the maintenance plan will require, at a minimum, that the measures in place just before redesignation be implemented if future violations occur."

EPA Response

As stated in EPA's proposal for this redesignation policy change, EPA is not waiving the section 184 OTR requirements. These requirements remain in place, even after redesignation to attainment. Therefore, unlike contingency measures that would only be adopted if triggered, redesignated areas in the OTR continue to be obligated to fulfill these OTR requirements, regardless of attainment designation or maintenance of the standard. Furthermore, EPA's proposed approval of the Reading area's redesignation request and maintenance plan required Pennsylvania to include I/M as a contingency measure. As stated above, not only did Pennsylvania include I/M in its contingency plan for the Reading area, but it also intends to fully implement its low enhanced program I/M by 1999.

The commenter's assertion that the new policy "ignores the rationale offered in the General Preamble" that it is "particularly important" to meet the section 182, 184 and 185 requirements prior to redesignation does not withstand scrutiny, since that rationale is not applicable to the circumstances presented by the Reading redesignation. The General Preamble stated that it would be important to meet these requirements so that they would be in place and therefore required to be included in the maintenance plan as contingency measures "if future violations occur". But this rationale has no bearing on the situation of an OTR state such as Pennsylvania, where the section 184 requirements will remain fully applicable, and where they will not be relegated to the role of contingency measures after redesignation. Thus the justification in the General Preamble and cited by the commenters for requiring the section 184 measures to be in place prior to redesignation is simply inapposite with respect to the Reading area.

Comment #6

CAC charges that EPA's proposed redesignation policy change "works at cross-purposes with efforts to control long-range transport problems, the very problem that underlies the OTR and the requirements applicable there."

EPA Response

As stated in EPA's proposal of this policy change, EPA is not waiving the section 184 requirement, established in the Act to address long-range transport of ozone and ozone precursors. Even

after redesignation to attainment, a state's obligation to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR.

EPA's new policy is not at "cross-purposes" with efforts to control transport. As stated above, there is no indication that allowing compliance with the section 184 requirements after redesignation would result in frustrating the satisfaction of those requirements. In the case of the Reading area, Pennsylvania has made its submissions with respect to RACT, NSR, and I/M. These programs have received either full, conditional, or limited approval. Moreover, the section 184 requirements are extrinsic to an area's status for designation purposes. Assurance of compliance with the section 184 requirements is to be achieved not through the redesignation process, but by the sanctions provisions provided by the Act.

Comment #7

CAC argues that "EPA's new policy tries to have it both ways." CAC claims that EPA previously "asserted that requirements specifically pegged to an area's attainment status or to reasonable further progress need not be met as a prerequisite to redesignation." This refers to EPA's policy memorandum dated May 10, 1995, from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." In that memorandum, EPA stated that it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require certain SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard. CAC goes on to argue that EPA's rationale for its proposed redesignation policy change, which "contends that because the § 184 requirements are not pegged to attainment, they too are not prerequisites to redesignation," contradicts the Agency's previous position.

EPA Response

EPA's May 10, 1995 policy memorandum interprets an area's obligation to submit SIP revisions for RFP, attainment demonstrations, and other related provisions as not applicable, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard. The Act's RFP and attainment demonstrations requirements are intended to move an area towards attainment of the ozone standard. If an area is already attaining the standard, EPA believes that it is reasonable to suspend these requirements for as long as an area attains the standard. This view was upheld by the United States Court of Appeals for the Tenth Circuit in *Sierra Club* v. *EPA,* No. 95–9541 (10th Cir. 1996). EPA maintains that its new redesignation policy does not conflict with its May 10, 1995 policy. EPA's new redesignation policy relates to OTR requirements under section 184 of the Act, which are not related to RFP or an area's ability to demonstrate attainment of the standard. These OTR requirements are intended to reduce regional emissions in the OTR. Moreover, as stated above, EPA is not waiving these requirements. All areas in the OTR, regardless of attainment status, are obligated to fulfill these requirements.

The May 10, 1995 determination of attainment policy dealt with a completely different set of issues not comparable to those addressed by section 184. EPA's rationale for finding the provisions of sections 182 and 172(c) not applicable was different from, but not inconsistent with, its rationale for finding the section 184 provisions inapplicable. In its May 10 policy, EPA interpreted as inapplicable certain statutory provisions—RFP, attainment demonstration, and section 172(c) contingency measures—whose requirements served no useful function once an area was attaining the standard, and whose purpose was achieved prior to redesignation. This rationale does not exclude independent justifications for interpreting other provisions of the Act as inapplicable. The grounds for finding section 184 requirements inapplicable is that these requirements remain in place even after redesignation, and thus redesignation will not preclude them from being enforced. This justification, although different from the May 10 policy, is not in conflict with it.

Even if EPA were not to rely on its new policy of interpreting section 184 requirements as inapplicable for purposes of evaluating redesignation requests, EPA's authority to create a de minimis exception to requirements provides a sufficient independent alternative ground for finding that these requirements have been met for purposes of redesignation.

Since the Reading area has demonstrated attainment and maintenance without the section 184 measures, and since these requirements will remain in place, EPA believes that there are grounds for making a finding that requiring satisfaction of these requirements prior to redesignation yields only insignificant environmental benefits. Indeed, EPA concludes that its existing policy with respect to NSR in the context of redesignation warrants a finding that the Reading area qualifies for a de minimis exception to the NSR requirement.

NSR: In a memorandum of Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment),* EPA set forth its policy not to insist on a fully-approved NSR program as a prerequisite to redesignation as an exercise of the Agency's general authority to establish *de minimis* exceptions to statutory requirements. *See Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power,* EPA has the authority to establish *de minimis* exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. In the Mary Nichols memorandum of October 14, EPA concluded that, although the NSR provisions of section 110 and Part D appear to be applicable requirements that would have to be met prior to redesignation, EPA may establish a *de minimis* exception to the requirement where no significant environmental value exists. EPA determined that where maintenance is demonstrated without reliance on NSR reductions, and where a prevention of significant deterioration (PSD) program will replace it, there is little or no environmental benefit from requiring full approval of NSR prior to redesignation, and thus a *de minimis* exception is justified. See Nichols memorandum. See also Cleveland final rulemaking notice (FRN), 61 FR 20469–20470 (May 7, 1996). Here, similarly, Pennsylvania has demonstrated that there is no need for part D NSR during the maintenance period to provide for continued maintenance of the NAAQS. To satisfy the requirements of section 184, Pennsylvania has submitted a revision to its Part D NSR program, which is awaiting EPA approval. EPA has concluded that these circumstances warrant a further application and elaboration upon the *de minimis* exception set forth in the October 14 memorandum. In accordance with that policy, EPA has determined that, for an area outside the OTR, there need not be a fully approved part D NSR program

prior to redesignation where it is not required for maintenance and where it will be replaced by a PSD program. EPA believes that the reasons underlying this *de minimis* exception apply with equal or greater force to the Reading area, which has shown that NSR is not required for maintenance but where Part D NSR obligations, rather than PSD, will continue to apply after redesignation. Thus, EPA concludes that the Mary Nichols memorandum and the principles on which it is founded warrant an extension of the *de minimis* exception to the NSR requirement imposed by section 184. This *de minimis* exception provides a separate and independent ground for concluding that the Reading area has met the requirements for redesignation with respect to NSR.

I/M: With respect to the I/M program, legislative authority for basic I/M is sufficient to meet the I/M redesignation rule. Apart from that, section 184 requires enhanced I/M, but it does not have to be approved prior to redesignation, since redesignation will not operate to relieve the Reading area of the requirement. The Reading area has in fact received conditional approval of its enhanced I/M program, and the area will start implementing the program by November, 1999.

Comment #8

CAC claims that EPA cannot support its proposed policy change by "citing other instances where the Agency has failed to comply with the Act. *Kokechik Fisherman's Association* v. *Secretary of Commerce*, 838 F.2d 795, 802–03 (D.C. Cir. 1988) ('[p]ast administrative practice that is inconsistent with the purpose of an act of Congress cannot provide an exception')." CAC asserts that EPA cannot support its proposal by citing the Agency's previous actions concerning conformity and oxygenated fuels.

EPA Response

EPA maintains that its previous actions that determined conformity and oxygenated fuels as not being applicable requirements for purposes of evaluating redesignation requests comply with the Act. Furthermore, those actions were the subjects of prior rulemaking, which EPA promulgated after notice and comment. The period for review of those actions has passed.

Final Action

Because Pennsylvania has corrected all deficiencies that were previously identified in the redesignation request and maintenance plan for the Reading area, EPA has determined that the Commonwealth's submittals satisfy the Clean Air Act's five criteria for redesignation. EPA is approving Pennsylvania's redesignation request for the area, submitted on November 12, 1993, and the ten-year ozone maintenance plan for the Reading area, which Pennsylvania submitted on January 28, 1997. EPA is also approving the 1990 base year VOC, NO_X, and CO inventories for the Reading ozone nonattainment area, which were submitted on January 28, 1997, because Pennsylvania has corrected all deficiencies that were previously identified in those inventories. In addition, for purposes of satisfying the I/M redesignation rule of January 1995, EPA is approving Pennsylvania's legislative authority to adopt and implement an I/M program. Finally, EPA is changing its policy on redesignation requirements for ozone nonattainment areas in the OTR. The policy change makes redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting requirements under section 184 of the Clean Air Act as not being applicable for the purpose of redesignation.

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth of Pennsylvania is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving Pennsylvania's redesignation request and maintenance plan for the Reading area, must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 22, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(123) The ten-year ozone maintenance plan for the Reading, Pennsylvania area (Berks County) submitted by the Pennsylvania Department of Environmental Protection on January 28, 1997:

(i) Incorporation by reference.

(A) Letter of January 28, 1997 from the Pennsylvania Department of Environmental Protection transmitting the ten-year ozone maintenance plan and 1990 base year emission inventories for the Reading area.

(B) The ten-year ozone maintenance plan for the Reading area, including emission projections, control measures to maintain attainment and contingency measures, adopted on February 3, 1997.

(ii) Additional material.

(A) Remainder of January 28, 1997 Commonwealth submittal pertaining to the maintenance plan for the Reading area.

3. Section 52.2036 is amended by adding paragraph (e) to read as follows:

§ 52.2036 1990 Base year emission inventory.

* * * * *

(e) EPA approves as a revision to the Pennsylvania State Implementation Plan (SIP) the 1990 base year emission inventories for the Reading, Pennsylvania area (Berks County) submitted by the Secretary of the Environment, on January 28, 1997. This submittal consists of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in the area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_X).

* * * * *

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671.

Subpart C—Section 107 Attainment Status Designations

5. In § 81.339 the ozone table is amended by revising the entry for the Reading area, Berks County to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
• •	•	•	•	•
Reading Area Berks County	June 23, 1997	Unclassifiable/Attainment.		
• •	•	•	•	•

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

* * * * *

[FR Doc. 97–11910 Filed 5–6–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 Part CFR 180

[OPP–300480; FRL–5713–5]

RIN 2070–AB78

Aminoethoxyvinylgiycine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes time-limited tolerances for residues of the plant regulator aminoethoxyvinylglycine in or on the food commodities apples and pears. The tolerances expire on and will be revoked by EPA on April 1, 2001. Abbott Laboratories submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances. This regulation sets the permissible levels of this plant regulator on apples and pears.

EFFECTIVE DATE: This regulation becomes effective May 7, 1997. Objections and hearing requests must be filed by July 7, 1997.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP–300480], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburg, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300480]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5–W57, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 20, 1997 (62 FR 7778), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by adding tolerances for residues of aminoethoxyvinylglycine, in or on the following food commodities: apples at 0.08 part per million (ppm), and pears at 0.08 ppm.

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placing technical aminoethoxyvinylglycine in Toxicity Categories III and IV.

2. A 13–week feeding study in rats at dietary intakes of 0, 0.45, 1.9 and 9.2 milligrams per kilogram per day (mg/kg/day) (males) and 0, 0.55, 2.2, and 9.4 mg/kg/day (females) with a no-observed-effect-level (NOEL) of 9.2 mg/kg/day for male rats and 2.2 mg/kg/day for female rats. The lowest-observed-effect-level (LOEL) was established at 9.4 mg/kg/day (the highest dose tested in females) based on reduced body weight gain, food consumption and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver.

3. A developmental toxicity study in rats at 0, 0.4, 1.77, and 8.06 mg/kg/day. The maternal LOEL is 8.06 mg/kg/day (the highest dose tested) based on decreased defecation, body weight gain, and food consumption; and the presence of red material around the nose. The developmental LOEL is also 8.06 mg/kg/day based on decreased mean fetal body weight and increases (within historical ranges) in two developmental skeletal variants (reduced ossification of the sternebrae and vertebral arches). The NOEL for maternal and developmental toxicity was established at 1.77 mg/kg/day.

4. A 21–day repeated dose dermal toxicity study in rats at 0, 100, 500, and 1,000 mg/kg/day. The NOEL is 1,000 mg/kg/day; a LOEL was not determined.

5. An immunotoxicity study in rats at 0, 1.25, 2.5, 5 and 15 mg/kg/day with a NOEL of 5 mg/kg/day based on the decreased primary antibody (IgM) response to sheep red blood cells; decreased absolute and relative thymus weights; decreased body weight, food consumption and food efficiency at the high-dose level. The LOEL is 15 mg/kg/day. The study did not fully meet the requirements outlined in the Pesticide Assessment Guidelines Subdivision M OPPTS Series 152–18. However, because a NOEL and LOEL were determined, and found to be consistent with those from other repeat-dose studies, the study need not be repeated.

6. An acceptable Ames study for inducing reverse mutation in *Salmonella* strains of bacteria exposed with or without activation at doses up to 5,000 micrograms per plate. The study showed negative results.

7. An acceptable study for inducing micronuclei in bone marrow cells of rats treated up to the maximum dose tested of 6,200 mg/kg. The study showed negative results.

8. A mutagenicity study with mouse lymphoma cells with or without activation to doses up to 5,000 micrograms/mL. Aminoethoxyvinylglycine is not mutagenic or cytotoxic when tested against mouse lymphoma cells strain L5178Y at a concentration of 5,000 micrograms/mL.

9. Additional data (a two-generation reproduction study in the rat) is being required by the Agency.

II. Aggregate Exposures

1. *From food and feed uses.* The primary source for human exposure to aminoethoxyvinylglycine will be from ingestion of both raw and processed food commodities as proposed in the February 20, 1997 Notice of Filing cited above. Based on tolerances of 0.08 ppm in or on apples and pears, the Theoretical Maximum Residue Contributions (TMRC) for the U.S. adult population and for U.S. children (1 to 6 years of age) were determined. In deriving the dietary exposure to aminoethoxyvinylglycine, EPA assumed that 100% of the apple and pear crops were cultured with the aid of this plant regulator. A subchronic exposure was used to estimate the TMRC. The TMRC for the U.S. population was estimated to be 0.000069 mg/kg/day. The TMRC for non-nursing infants less than 1 year old was 0.000722 mg/kg/day. The TMRC for nursing infants less than 1 year old was 0.000552 mg/kg/day. The TMRC for children 1 to 6 years old was 0.000224 mg/kg/day. The TMRC for children 7 to 12 years old was 0.000092 mg/kg/day.

2. *From potable water.* In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (Reference Doses (RfDs) or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause aminoethoxyvinylglycine to exceed the RfD if the time-limited tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with aminoethoxyvinylglycine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the time-limited tolerances are granted.

3. *From non-dietary uses.* There is a proposed non-dietary use for aminoethoxyvinylglycine as a commercial plant regulator to be applied to certain ornamentals. There are no proposed home and garden uses. The exposure from this commercial use is expected to be dermal in nature. An acute dermal toxicity study yielded an LD_{50} of > 2 g/kg. A 21–day repeated dose dermal toxicity study resulted in no significant treatment-related effects at 1,000 mg/kg/day, the highest dose tested.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically and structurally dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether aminoethoxyvinylglycine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, aminoethoxyvinylglycine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that aminoethoxyvinylglycine has a common mechanism of toxicity with other substances.

III. Determination of Safety for U.S. Population and Non-nursing Infants

1. *The U.S. population.* Based on a NOEL of 2.2 milligrams per kilogram of bodyweight per day (mg/kg bwt/day) from a subchronic toxicity study that demonstrated reduced body weight gain, food consumption, and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver; and using an uncertainty factor of 1,000 the Agency has set a RfD of 0.0002 mg/kg bwt/day for this assessment of risk. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 3.4% of the RfD for the U.S. population.

2. *Non-nursing infants.* Exposure to non-nursing infants as a result of the use of aminoethoxyvinylglycine in the culture of apples and pears will result in the use of 36.1% of the RfD.

3. *From nonfood uses.* Exposure from nonfood uses of aminoethoxyvinylglycine and from

contaminated potable water sources have not been precisely addressed in this assessment. However, the EPA does not foresee that these exposures will result in a cumulative level that exceeds the RfD. EPA concludes that there is reasonable certainty that no harm will result from the aggregate exposures to residues of aminoethoxyvinylglycine.

IV. Determination of Safety for Infants and Children

Risk to infants and children was determined by the use of a developmental study in rats that had a NOEL for developmental toxicity of 1.77 mg/kg/day, based on decreased mean fetal body weight and increases (within historical ranges) in two developmental skeletal variants (reduced ossification of the sternebrae and vertebral arches), and a maternal NOEL of 1.77 mg/kg/day based on decreased defecation, body weight gain, and food consumption; and the presence of red material around the nose.

FFDCA section 408 provides that EPA may apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children.

Available data indicate that maternal and developmental toxicity were observed in the developmental toxicity study in rats at the highest dose tested (8.06 mg/kg/day). Maternal toxicity was observed in the rat in the 8.06 mg/kg/day dose group as decreased defecation, body weight gain, and food consumption; and the presence of red material around the nose.

Developmental toxicity was observed in the high dose group (8.06 mg/kg/day) as decreased mean fetal body weight and increases (within historical ranges) in two developmental skeletal variants (reduced ossification of the sternebrae and vertebral arches). Due to the incompleteness of the data, the Agency used a thousandfold uncertainty factor in the RfD calculations, and has imposed a requirement for a two-generation reproduction study in rats. The thousandfold uncertainty factor includes an additional uncertainty factor of 10 to protect infants and children.

The percent of the RfD that will be utilized by the aggregate exposure to aminoethoxyvinylglycine will range from 4.6% for children 7 to 12 years old, up to 36.1% for non-nursing infants less than 1 year old. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

V. Other Considerations

A. Endocrine Effects

Currently, EPA does not have any data indicating that aminoethoxyvinylglycine has endocrine effects. The Agency is not requiring information on the endocrine effects of this biochemical plant regulator at this time; Congress has allowed 3 years after FQPA was signed into law on August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

B. Metabolism in Plants and Animals

The metabolism of aminoethoxyvinylglycine in plants and animals is adequately understood for the purposes of these time-limited tolerances. A study designed to determine whether uptake, translocation and metabolism of aminoethoxyvinylglycine occurs in apples identified seven minor metabolites in addition to the primary metabolite, *N*-acetyl aminoethoxyvinylglycine. The study was not meant as a measure of the amount of aminoethoxyvinylglycine residues and metabolites found in apples under normal field conditions. The only significant incorporation of aminoethoxyvinylglycine in apple tissues, following brush-on application at high rates, resulted from absorption from the peel rather than translocation from the leaves.

Aminoethoxyvinylglycine is also metabolized in the tissues to form *N*-acetyl aminoethoxyvinylglycine and several other minor metabolites, and is partially degraded on the apple surface to water-soluble products that may be formed due to microbial and/or photodegradative action.

C. Analytical Method

There is a practical method for detecting and measuring levels of aminoethoxyvinylglycine in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these time-limited tolerances. The proposed analytical method for determining residues is high-pressure liquid chromatography (HPLC). The HPLC/fluorescence detector analytical method used by the registrant has been validated by an independent laboratory (ABC Laboratories), as required by PR Notice 88–5, and is sufficient for these time-limited tolerances. Validation by an EPA laboratory is a condition of registration for aminoethoxyvinylglycine, and upon such validation information on this method will be provided to FDA. In the interim, the registrant-submitted method is available to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch. Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703) 305–5937.

D. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine on apples or pears, or on any other crops.

E. Data Gaps

A data gap currently exists for a rat two-generation reproduction study. All tolerances are time-limited because of this data gap. The time limitation allows for development and review of the data. The study, imposed by EPA to augment the results of the developmental toxicity study, is expected to be submitted and reviewed prior to the expiration date of these tolerances. Based on the available toxicological data, the thousandfold uncertainty factor, and the levels of exposure, the EPA has determined that the proposed time-limited tolerances have a reasonable certainty of no harm from aggregate exposure to the pesticide and its residues.

F. Summary of Findings

The analysis for aminoethoxyvinylglycine using tolerance level residues shows that the proposed uses in the culture of apples and pears will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to aminoethoxyvinylglycine residues at levels below 100 percent of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of the time-limited tolerances by adding a new section to 40 CFR part 180 will be safe; therefore the time-limited tolerances are established as set forth below.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in

section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 7, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information 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.

VII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300480] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a "significant regulatory action" and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995. (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, Oct. 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact (46 FR 24950, May 4, 1981).

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 24, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding § 180.502 to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) *General.* Tolerances are established for residues of aminoethoxyvinylglycine in or on the following food commodities:

Commodity	Parts per million	Revocation/Expiration Date
Apples	0.08	April 1, 2001
Pears	0.08	4April 1, 2001

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–11901 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300472; FRL–5600–1]

RIN 2070–AB78

Plant Extract Derived From Opuntia lindheimeri (Prickly Pear Cactus), Quercus falcata (Red Oak), Rhus Aromatica (Sumac), and Rhizophoria mangle (Mangrove): Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide plant extract derived from *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (Red oak), *Rhus aromatica* (sumac), and *Rhizophoria mangle* (mangrove) in or on all raw agricultural commodities (RACs), when applied as a nematicide/plant regulator in accordance with good agricultural practices. This exemption was requested by Appropriate Technologies, Limited.

DATES: This regulation becomes effective May 7, 1997. Objections and requests for hearings must be received by EPA on July 7, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300472], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket–epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300472]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) [90], Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 5-W57, CS-1, 2800 Crystal Drive, Arlington, VA 22202. (703) 308-8263; e-mail: greenway.denise–epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 1994 [59 FR 47136], EPA issued a notice (FRL–4904–7) that ATL Enterprises, Inc., had submitted pesticide petition PP 8F3635 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the biochemical pesticide aqueous extract of roots, galls, and bark from four plant species. Incorrect taxonomic names were provided for two of the plant species. The published names were *Opinta lindheimeri, Quercus falcata, Rhus aromatica, and Rhizophoria mangle* for use in or on all raw agricultural commodities when applied as a plant regulator in soil and/or foliar applications in accordance with good agricultural practices. The petition was later revised by the petitioner and reannounced by EPA, in accordance with the requirements of the Food Quality Protection Act of 1996 in the **Federal Register** of February 13, 1997 (62 FR 6777)(FRL–5588–9). The notice announced that Appropriate Technology Limited was filing the petition to exempt from the requirement of a tolerance residues of extract from *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (red oak), *Rhus aromatic* (sumac), and *Rhizophora mangle* (mangrove) in or on all raw agricultural commodities when applied as a nematocide or as a plant regulator in soil and/or foliar applications in accordance with good agricultural practices. EPA received misspellings for two of the plant species for the February 13, 1997 notice. The correct spellings for all four are as follows: *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (red oak), *Rhus aromatica* (sumac), and *Rhizophoria mangle* (mangrove). The February 24, 1997 **Federal Register** (62 FR 8244)(FRL–5591–4) announced that the comment period would end on March 17, 1997. In response to the Notice of Filing, EPA received supporting comments from 14 companies/citizens in Egypt, Honduras, Australia, Saudi Arabia, Syria, Lebanon, Chile, the Philippines, Switzerland and the United States. No comments opposing the petition were received.

The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA's findings regarding this petition as required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act.

I. Proposed Use Practices

Biochemical pesticide extract powder, also known as Plant Extract 620, derived from *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (red oak), *Rhus aromatica* (sumac), and *Rhizophoria mangle* (mangrove) will be diluted into two water-based products, Sincocin and Agrispon, both at a concentration of 0.56 percent Plant Extract 620. The maximum application rate for any use pattern would not exceed 14 grams of plant extract/acre/application; the maximum application rate for food crops would not exceed 4 grams of plant extract/acre/application. The maximum permissible amount applied per acre per year must not exceed 150.

Agrispon is diluted with water and applied at a rate of 13 fluid ounces/acre (oz/acre) for annuals and greenhouses. Timing and frequency of applications depend on the plant growth cycle length; a single application for plants with a growth cycle of 60 days or less; a second application 45 to 60 days after the first for plants with a 60 to 120 day growth cycle; every 45 to 60 days during vigorous growth stage for long season plants or those with longer than a 120 day growth cycle. Agrispon is applied to the soil surface under trees at a rate of 13 fluid oz/acre, with an additional 6 fluid oz/acre applied to the tree canopy. For evergreens, applications are made every 60 days. Deciduous trees are first treated at bud break or leaf flush in the spring with subsequent applications every 60 days until dormancy occurs.

Sincocin is applied to food crops and orchards at a rate of 26 fluid oz/acre. For both food crops and orchards, the first

application is made during initial root flush with subsequent applications every 60 days during active growth. The application rate for turf and ornamentals is 2.75 gallons (87 fluid ounces)/acre. Golf fairways are treated every 30 days. Ornamentals are treated at root flush with subsequent applications every 30 to 60 days during active growth.

II. Toxicological Profile

The toxicological data considered in support of the exemption from the requirement of a tolerance include: acute oral, acute dermal, acute inhalation, eye irritation, dermal irritation, and Ames mutagenicity tests. The following table summarizes the Agency's findings for the submitted toxicological data.

Guideline No.	Study	Product	Results	Toxicity Category
152–10	Acute Oral (Rat)	Plant Extract 620 (TGAI)	LD_{50} > 5050 mg/kg	IV
152–11	Acute Dermal (Rabbit)	Plant Extract 620	LD_{50} > 5050 mg/kg	IV
152–12	Acute inhalation (Rat)	Sincocin (End-use product)	LC_{50} > 2.04 mg/L	IV
152–13	Primary eye irritation	Plant Extract 620	Severe Irritation in Non-Washed Eyes	I
			Mild Irritation in Washed Eyes at 0.1 ml	III
		Sincocin	Minimal irritation, reversible in 2 days at 0.1 ml	IV
		Agrispon	No irritation at 0.1 ml	IV
152–14	Primary dermal irritation (Rabbit)	Plant Extract 620	Moderate Irritation at 72 Hours	III
152–15	Hypersensitivity		Must be reported if/when it occurs	
	Mutagenicity	Sincocin & Agrispon	Negative	

The Agency granted a data waiver request for the acute inhalation toxicity test based on the aqueous end-use product, Sincocin, since Plant Extract 620, the technical grade active ingredient (TGAI) which is also the manufacturing use product, could not undergo inhalation testing by virtue of it being a powder. The end-use products, Agrispon and Sincocin, are Toxicity Category III for primary dermal irritation. The remaining acute toxicity tests were waived since the results from the TGAI were adequate to characterize the responses for the end-use products which are 0.56% dilutions of the TGAI. The results of the submitted acute toxicology and mutagenicity data, indicated that plant extract from *Opuntia lindheimeri, Quercus falcata, Rhus aromatica,* and *Rhizophoria mangle* are of a low acute toxicity such that test requirements for subchronic, chronic, immune, endocrine, dietary and non-dietary studies were not triggered. The Agency has determined that all toxicology data requirements have been satisfied. There were no toxic endpoints identified as a result of the submitted studies and therefore no reference dose or no observable effect level to be established.

III. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non dietary sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary Exposure*— a. *Food.* Dietary exposure from use of this plant extract is possible but the magnitude of the residues is expected to be minimal to negligible since the application rate is 4 grams per acre per application on food crops. The maximum total amount permitted for application for 1 year is 150 grams. Moreover, washing off of foliage and fruit by rainfall or during food processing and handling, and likely degradation of the plant extracts by soil microflora would further reduce the amount of dietary exposure.

b. *Drinking water.* Oral exposure, at very low levels, may occur from ingestion residues of the plant extract in the drinking water. However a lack of mammalian toxicity for the plant extract has been demonstrated.

2. *Non-dietary, non-occupational exposure.* The primary non-dietary sources of exposure the Agency looks at include exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Products containing the plant extract are not registered for use on residential lawns or indoor residences or buildings.

IV. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this plant extract, there is no reason to expect any cumulative effects from this plant extract and other substances.

V. Endocrine Disruptors

The Agency has no information to suggest that the plant extract, also known as Plant Extract 620, a composite of plant extract powder, will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical plant extract pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

VI. Determination of Safety

1. *U.S. population.* The results of acute toxicity tests and, mutagenicity tests demonstrate a low to minimal toxicity profile for the plant extract. Moreover, when Plant Extract 620 is incorporated into the end-use product formulation and following dilution of the product according to label instructions, the result is an extremely low amount of 2 to 14 grams of active ingredient applied per acre per application. A maximum limit of 150 grams per acre of the active ingredient per year will be in effect for this biochemical pesticide. The submitted data do not lead the Agency to suspect any acute or chronic dietary risks. The low toxicity, the low application rate, and the use patterns leads the Agency to conclude that residues from use of the biochemical pesticide extract from *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (Red oak), *Rhus aromatica* (sumac), and *Rhizophoria mangle* (mangrove) will not pose a

dietary risk of concern under reasonably foreseeable circumstances. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure under this exemption.

2. *Infants and children.* The Agency has considered available information on the variability of the sensitivities of major identifiable subgroups of consumers including infants and children and the physiological differences between infants and children and adults and effects of *in utero* exposure to biochemical pesticides. As noted previously, the Agency has concluded that dietary exposure to the plant extract will be minimal due to the very low amounts, 4 grams per application, and the maximum of 150 grams permitted per acre per year. Natural degradation processes including soil microbial activity and rain fall plus food processing steps such as washing and cooking will further reduce the amounts available for exposure. Accidental ingestion of this product by children is possible but the end-use products have been classified as Toxicity Category IV, practically non-toxic with regards to oral toxicity. While the manufacturing product is Toxicity Category I, acutely toxic with regards to primary eye irritation, unwashed eyes, the end-use products will contain a hundredfold dilution of the plant extract which are further diluted upon spraying. Furthermore, the end-use products will not be used on lawns where children play.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, EPA believes there is reliable data to support the conclusion that this plant extract is not toxic to mammals, including infants and children, and thus there are no threshold effects. As a result, the provision requiring an additional margin of exposure does not apply.

VII. Analytical Method

The Agency has determined that an analytical method is unnecessary due to the low toxicity of the plant extract and due to the low application rate of up to 4 grams per acre on food crops and up to 14 grams per acre for ornamentals and turf per application. The yearly maximum will be 150 grams of active ingredient per acre.

VIII. International Tolerances

There are no CODEX tolerances nor international tolerances for the plant extract at this time.

IX. Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure of the U.S. population, including infants and children, to residues of plant extract from *Opuntia lindheimeri* (prickly pear cactus), *Quercus falcata* (red oak), *Rhus aromatica* (sumac), and *Rhizophoria mangle* (mangrove). This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant extract. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA section 408(j)(3) for *Opuntia lindheimeri, Quercus falcata, Rhus aromatica,* and *Rhizophoria mangle.*

X. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, by July 7, 1997, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is 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). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information 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.

XI. Public Docket

A record has been established for this rulemaking under the docket number [OPP–300472] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-docket–epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in

"ADDRESSES" at the beginning of this document.

XII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (FRA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions from tolerance, adversely impact small entities and concluded, as a generic matter that there is no adverse impact (46 FR 24950, May 4, 1981).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: April 24, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1179 is added to read as follows:

§ 180.1179 Plant extract derived from Opuntia lindheimeri, Quercus falcata, Rhus aromatica, and Rhizophoria mangle; exemption from the requirement of a tolerance.

The biochemical pesticide plant extract derived from *Opuntia lindheimeri, Quercus falcata, Rhus aromatica*, and *Rhizophoria mangle* is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a nematicide/plant regulator in accordance with good agricultural practices.

[FR Doc. 97–11900 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–53; RM–9003]

Radio Broadcasting Services; Garden City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 287A to Garden City, Missouri, as that community's first local FM broadcast service in response to a proposal filed by R. Lee Wheeler and Sarah H. Wheeler. *See* 62 FR 6927, February 14, 1997. There is a site restriction 0.6 kilometers (0.4 miles) west of the community. The coordinates for Channel 287A at Garden City are 38–33–49 and 94–11–53. With this action, this proceeding is terminated.

DATES: Effective June 16, 1997. The window period for filing applications for Channel 287A at Garden City, Missouri, will open on June 16, 1997, and close on July 17, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–53, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Garden City, Channel 287A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11823 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–235; RM–8909]

Radio Broadcasting Services; Forest City, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Vixon Valley Broadcasting, allots Channel 261A at Forest City, Pennsylvania, as the community's first local aural transmission service. *See* 61 FR 54309, December 4, 1996. Channel 261A can be allotted to Forest City in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.2 miles) northeast to avoid short-spacings to the licensed sites of Station WODE-FM, Channel 260B, Easton, Pennsylvania, and Station WDST(FM), Channel 261A, Woodstock, New York, at petitioner's requested site.

The coordinates for Channel 261A at Forest City are North Latitude 41–42–55 and West Longitude 75–23–06. Since Forest City is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective June 16, 1997. The window period for filing applications for Channel 261A at Forest City, Pennsylvania, will open on June 16 , 1997, and close on July 17, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–235, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Forest City, Channel 261A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11824 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–233; RM–8908]

Radio Broadcasting Services; Cle Elum, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Brian J. Lord, allots Channel 229A at Cle Elum, Washington, as the community's first local aural transmission service. *See* 61 FR 63810, December 2, 1996. Channel 229A can be allotted at Cle Elum in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.4 miles) southeast to avoid a short-spacing to the licensed site of Station KMPS-FM, Channel 231C, Seattle, Washington, at petitioner's requested site. The coordinates for Channel 229A at Cle Elum are North Latitude 47–07–36 and West Longitude 120–50–41. Since Cle Elum is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective June 16, 1997. The window period for filing applications for Channel 229A at Cle Elum, Washington, will open on June 16, 1997, and close on July 17, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–233, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Cle Elum, Channel 229A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11825 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–42; RM–8988]

Radio Broadcasting Services; Charlevoix, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 300A to Charlevoix, Michigan, as that community's second FM broadcast service in response to a petition filed by Peninsula Broadcast Company. *See* 62 FR 5790, February 7, 1997. The coordinates for Channel 300A at Charlevoix are 45–14–30 and 85–23–01. There is a site restriction 12.6 kilometers (7.8 miles) southwest of the community. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 16, 1997. The window period for filing applications for Channel 300A at Charlevoix, Michigan, will open on June 16, 1997, and close on July 17, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–42, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 300A at Charlevoix.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11826 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–130; RM–8818]

Radio Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Darby Radio, allots Channel 267A to Grenada, Mississippi, as an additional FM service. *See* 61 FR 31085, June 19, 1996. Channel 267A can be allotted to Grenada in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) west to avoid a short-spacing conflict with the licensed site of Station WJDQ(FM), Channel 267C1, Meridian, Mississippi. The coordinates for Channel 267A at Grenada are 33–47–48 NL and 89–54–29 WL. With this action, this proceeding is terminated.

DATES: Effective June 16, 1997. The window period for filing applications will open on June 16, 1997, and close on July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–130, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 267A at Grenada.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 97–11829 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 91

RIN 1018–AE07

1977 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) revises the regulations governing the conduct of the 1997 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The amendments include the following changes: deadline September 15 for submitting entry; setting uniformity for design to mat the entry *over only;* and entry must be contestant's original "hand drawn" creation.

EFFECTIVE DATE: The rule is effective July 1, 1997, the beginning of the 1997–98 contest.

ADDRESSES: Manager of Licensing, Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, N.W., Suite 2058, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, (202) 208–4354.

SUPPLEMENTARY INFORMATION: The Service published the proposed rule to amend these regulations on January 30, 1997 (62 FR 4516).

The Federal Duck Stamp Contest (Contest) is the only Federal agency-run art contest and has been in existence since 1949 with the 1950 stamp the first to be selected on open competition. The Federal Duck Stamp's main use is a revenue stamp needed by waterfowl hunters.

This year's Contest and species information follows:

1. *Contest schedule:*

1997–98 Federal Duck Stamp Contest—November 4–6, 1997

Public Viewing—Tuesday, November 4 from 10:00 a.m. to 2:00 p.m.

Judging—Wednesday, November 5 at 10:30 a.m. through Thursday, November 6 at 9:00 a.m.

2. The Contest will be held at the Department of the Interior building, Auditorium (C Street entrance), 1849 C Street, NW, Washington, DC.

3. The *three* eligible species for the Contest: (1) Barrow's Goldeneye; (2) Black Scoter; and (3) Mottled Duck.

As part of an effort to administer and make minor improvements to the Contest, the Service makes the following changes to this year's contest:

1. Persons entering the 1997 Contest may submit entries anytime after July 1, but *all* entries must be postmarked no later than midnight Monday, September 15, 1997.

2. The Service requires that each entry must be matted (*over only*) with a 9 x 12 inch white mat, 1 inch wide, and the entire entry cannot exceed ¼ inch in total thickness. This new format is a requirement to secure the artwork from being damaged and sets uniformity for exhibiting at various museums across the country.

3. The Service clarifies that the identified species must be the *dominant* feature of the design. The design must be the contestant's original "*hand drawn*" creation. The design may not be copied or duplicated from previously published art, including photographs. Photographs, computer-generated art, art produced from a computer printer or other computer' mechanical output device (air brush method excepted) are ineligible and will be disqualified.

The contest deadline was reestablished for submitting entry to

allow participants additional time to research the anatomy of eligible species since many species are located in many diverse geographical regions and may require more investigation and perfection of the artwork. The Service clarifies that other living creatures, scenes and designs may be part of the design as long as the *identified species* are the *dominant* feature.

Analysis of Public Comment

The Service received 12 comments via Internet Website and 2 written comments from artists requesting reconsideration for submission of computer-generated art to the contest. Many disagreed with the Service's proposed change that the participant's original design should be "hand drawn." The respondents were in agreement that the computer is a form of medium and the artist should be able to choose any medium to paint the art. They further stated that the computer is an art tool, the same concept of using airbrush and pencil, and is a new and creative way of painting. The respondents feel that digital paintings are original and as dependent on the talents and skills of the artists as any traditionally rendered painting. If computer technology can be used to save a duck through migration studies, surgical procedures, oil spill clean ups, the respondents questioned why can't it be used as a tool to draw a duck. Many artists today are using computers for drawing and painting; and it is possible to create "art drawn by hand" by using a pressure-sensitive digital tablet, but the computer paintings must be sent to a mechanical device to be printed. By using this method, artists have to make each stroke by hand on the digital tablet. It was suggested that if we want to consider making changes, we should say "no to manipulated photographs" or request proof of originality of the art required of all entries.

Service Response

The Service considered all of the comments, but the Federal Duck Stamp Program's intent is to keep the art competition as the traditional American art form that it is and has been for over 48 years. The Service feels the history, tradition, and beauty of this unique art form should be maintained by requiring art entries to be "original" hand created in the traditional "hand painted" manner that artist have been submitting for 48 years.

The Federal Duck Stamp Office acknowledges that the computer is a creative tool. However, computer art has the potential for fraud and plagiarism and also puts an undue burden on the artists and judges for assuring the originality of the work. It almost would be impossible to prove that "printed" entries are original art, since through the Internet, computer users can download prints from almost any source.

It is, therefore, the Government's decision to disallow any work or creation that is generated by computer or other mechanical means that are not "hand drawn."

This regulation was not subject to Office of Management and Budget review under Executive Order 12866. These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements. The Department of the Interior has determined that this regulation will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the changes/revisions to the Contest will affect individuals, not businesses or other small entities as defined in the Act.

List of Subjects in 50 CFR 91

Hunting, Wildlife.

Accordingly, Title 50, Part 91 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

PART 91—[AMENDED]

2. Section 91.11 is amended by revising paragraph (b) to read as follows:

§ 91.11 Contest deadlines.

* * * * *

(b) Entries must be postmarked no later than midnight, September 15.

3. Section 91.13 is revised to read as follows:

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting seven (7) inches high and ten (10) inches wide. The entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scrollwork, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (*over only*) with a nine (9) inch by twelve (12) inch white mat, one (1) inch wide, and the entire entry cannot exceed one quarter (¼) inch in total thickness. Entries must not be framed, under glass, or have a protective covering that is attached to the entry.

4. Section 91.14 is revised to read as follows:

§ 91.14 Restrictions on subject matter to entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the *DOMINANT* feature of the design. The design may depict more than one of the eligible species, Designs may include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, and other designs that depict the sporting, conservation, stamp collecting and other uses of the stamp. The overall mandate will be to select the best design that will make an interesting, useful and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original *"hand drawn"* creation. The entry design may not be copied or duplicated from previously published art, including photographs. Photographs, computer-generated art, art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for the Federal or a state stamp design may be submitted in the current contest if it meets the above criteria.

Dated: April 20, 1997.

Dan Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–11775 Filed 5–6–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 042397A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Reductions

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further restrictions to the Pacific Coast groundfish fisheries for widow rockfish,

bocaccio, Dover sole, thornyheads, and sablefish, and clarifies the cross-over provisions for operating in areas with different trip limits. These actions are authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. These restrictions are intended to keep landings as close as possible to the 1997 harvest guidelines for these species.

DATES: Effective from 0001 hours (local time) May 1, 1997, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. For vessels operating in the B platoon, effective from 0001 hours (local time) May 16, 1997, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through May 22, 1997.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Acting Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140 or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to routine management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the states of Washington, Oregon, and California, at its April 8–11, 1997, meeting in San Francisco, CA.

Widow Rockfish

The limited entry fishery for widow rockfish currently is managed under a 2-month cumulative trip limit of 70,000 lb (31,752 kg). The best available information at the April 1997 Council meeting indicated that 1,458 mt of widow rockfish had been taken through March 31, 1997, and that the 6,500–mt harvest guideline would be reached by mid-October 1997 if the rate of landings is not slowed. The Council therefore recommended that the 2-month cumulative trip limit for widow rockfish be reduced May 1, 1997, from 70,000 lb (31,752 kg) to 60,000 lb (27,216 kg) coastwide to keep landings within the harvest guideline in 1997.

Bocaccio

Bocaccio, which are found predominantly off California south of Cape Mendocino (40°30′ N. lat.), comprise one component of the *Sebastes* complex of rockfish. The acceptable biological catch (ABC) and harvest guideline for bocaccio were severely reduced in 1997 as a result of a new stock assessment. The harvest guideline for bocaccio was set at its overfishing threshold in 1997, as a 1-year step down to fishing at the level of ABC. Bocaccio is particularly difficult to manage because many gear types are involved. It is caught with commercial trawl, longline, hook-and-line, set net, and pot gear, and substantial amounts also are taken in the recreational fishery.

The best available information at the April 1997 Council meeting indicated that 80 mt of bocaccio had been taken through March 31, 1997, and that the 387–mt harvest guideline would be reached by the end of the year. However, uncertainty in recreational catch levels, and projections based on achievement of the 332–mt commercial harvest guideline (the harvest gudeline minus the recreational catch) indicate that the commercial harvest guideline would be reached by late October. To assure that the harvest guideline and overfishing threshold for bocaccio are not exceeded, the Council recommended two changes to trip limits south of Cape Mendocino, effective May 1, 1997: A reduction from 12,000 lb (5,443 kg) to 10,000 lb (4,536 kg) in the 2-month cumulative trip limit for the limited entry fishery; and, for the open access fishery, a reduction from 300 lb (136 kg) to 250 lb (113 kg) per trip for hook-and-line and trap gear, with no change to the monthly cumulative limit of 2,000 lb (907 kg). No changes were recommended to the trip limits for the open access set net fishery south of Cape Mendocino, the open access fishery targeting on non-groundfish species, or to the bag limit for the recreational fishery, but such changes could be made in the future.

Dover Sole, Thornyheads, and Trawl-Caught Sablefish (the DTS Complex)

The Council recommended that changes be made May 1, 1997, to the 2-month cumulative trip limits for Dover sole north of Cape Mendocino and thornyheads coastwide, which also result in a reduction to the trip limit for the DTS complex north of Cape Mendocino.

Dover Sole

The limited entry fishery for Dover sole is managed with a coastwide harvest guideline which includes a separate harvest guideline for the Columbia area. Coastwide landings of Dover sole are projected to reach the 11,050–mt harvest guideline on November 26, 1997, but this is due predominantly to exceeding the 2,850–mt Columbia area harvest guideline by 827–1,288 mt. If landing rates are not slowed, the harvest guideline in the Columbia area is projected to be reached in early to late September. The Council therefore recommended lowering the 2-month cumulative trip limit from 38,000 lb (17,237 kg) to 30,000 lb (13,608 kg) for the limited entry fishery north of Cape Mendocino, with the intent that both the Columbia and coastwide harvest guidelines would not be exceeded.

Thornyheads (Shortspine and Longspine)

The limited entry fishery for the two species of thornyheads is managed with a coastwide, 2-month cumulative trip limit for both species combined, which includes a separate limit for shortspine thornyheads. The harvest guideline for longspine thornyheads will not be reached in order to protect shortspine thornyheads. Shortspine thornyheads are managed so as not to exceed total catch of 1,500 mt in 1997 (1,380 mt for the landed catch harvest guideline and 120 mt for trip-limit induced discards), and therefore is above the 1,000–mt ABC but below the 1,757–mt overfishing threshold (total catch). Approximately 400 mt of shortspine thornyheads had been landed through March 31 and the harvest guideline is projected to be reached on October 26, 1997, if landing rates are not slowed. The Council therefore recommended a reduction in the 2-month cumulative trip limit for thornyheads from 4,000 lb (1,814 kg) to 3,000 lb (1,361 kg). Because both species often are caught together, a reduction also was recommended to the overall limit for thornyheads, from 20,000 lb (9,072 kg) to 15,000 lb (6,804 kg), to maintain the same proportion between longspine and shortspine thornyheads. Otherwise, additional discards of shortspine thornyheads could occur, with no real reduction in the level of catch.

DTS-North of Cape Mendocino

The limited entry, 2-month cumulative trip limit for the DTS complex north of Cape Mendocino is the sum of the trip limits for Dover sole, thornyheads, and trawl-caught sablefish.

The 2-month cumulative limit for the DTS complex therefore is reduced by 13,000 lb (5,897 kg), from 70,000 lb (31,752 kg) to 57,000 lb (25,855 kg), reflecting the reductions in the trip limits for Dover sole north of Cape Mendocino and for thornyheads coastwide. However, the 2-month cumulative trip limit of 100,000 lb (45,359 kg) south of Cape Mendocino is not changed to reflect the reduction in the trip limits for thornyheads. This has the effect of increasing the maximum amount of Dover sole that may be taken south of Cape Mendocino, because the limit for Dover sole in that area is the DTS limit minus the landings of thornyheads and trawl-caught sablefish.

Fixed-Gear Sablefish Fishery North of 36° N. lat.

Sablefish are managed to achieve the limited entry allocation for nontrawl gear of 2,754 mt in 1997. Projected landings to the end of the year are not available because the regular (or "primary") season which accounts for the majority of landings has not yet occurred. However, the Council has declared its intent to keep landings in the daily trip limit fishery, that occurs outside the regular and any mop-up seasons, to about the same level (385 mt) as in 1996. Testimony at the April Council meeting indicated that landings by the limited entry fixed gear fleet were accelerating, possibly by vessels expecting not to qualify for the proposed sablefish endorsement that would be required to participate in the regular and mop-up seasons for the limited entry sablefish fishery in 1997 and beyond. Therefore the Council recommended that landings under the current daily trip limit of 300 lb (136 kg) be further restricted with a cumulative limit of 5,100 lb (2,313 kg) of sablefish per month in the limited entry fishery north of 36° N. lat.

Fixed-Gear Sablefish Fishery South of 36° N. lat.

The Council also considered a proposal from limited entry, fixed gear sablefish fishers who operate in the Conception area south of 36° N. lat. The Council recommended that if at the end of July, cumulative landings of sablefish in the Conception area are 210 mt or less, then, effective September 1, 1997, limited entry fixed gear fishers operating in that area will have the option of continuing under the current daily trip limit or making one landing a week above 350 lb (159 kg) but less than 1,050 lb (476 kg). If sablefish landings reach, or are projected to reach, 400 mt before the end of the year, the option to make one landing a week above 350 lb (159 kg) will be rescinded. Landings of sablefish by all gears (including open access and limited entry trawl and nontrawl fisheries) will be included when monitoring or projecting the 210–mt and 400–mt levels. If this proposal is implemented, it will be announced in the **Federal Register** before September 1, 1997.

Future Inseason Changes to Management Measures

The Council meetings in September and November 1997 occur just after the beginning of 2-month cumulative periods, making it impossible to implement changes at the beginning of those periods. To resolve this problem, the Council will consider several courses of action at its June meeting. Possible solutions include: Resuming 1-month cumulative trip limits on September 1 (which means the 60 percent monthly limits would become obsolete); or providing general guidance to NMFS to make inseason adjustments after consultation through a conference call rather than at a Council meeting. The Council also may consider imposing, for some period of time, very restrictive trip limits or even fishery closures as early as July 1, 1997, to ensure that harvest guidelines or other allocations are not exceeded, or to make sure that some commercially important species are available at the end of the year. These issues will be discussed further, and may be acted on, at the June 23–25, 1997, Council meeting in Seattle, WA. At its June 1997 meeting, the Council also will review the progress of the groundfish fishery and may recommend rapid changes to the limits announced herein, as early as July 1, 1997. Any changes approved by NMFS will be announced in the **Federal Register.**

Cross-Over Provisions

After publication of the annual management measures for 1997, NMFS received a comment that the cross-over provisions were confusing. NMFS is taking this opportunity to clarify that in paragraph A.(12)(b) of section IV., which discusses fishing in a more liberal area before fishing in a more restrictive area. That paragraph states:

> "If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and possesses or lands that species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period."

This paragraph is revised to clarify that "that species" refers to the same species but not necessarily the identical fish that were caught in the more liberal area.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and makes the following changes to the 1997 annual management measures (62 FR 700, January 6, 1997). The trip limit changes for the limited entry fishery may also affect the open access fishery, including exempt trawl gear used to harvest pink shrimp and prawns, California halibut, and sea cucumbers. As stated in paragraph I. of the annual management measures: "A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same gear and/or subarea in the limited entry fishery; or, in any calendar month, 50 percent of any 2-month cumulative trip limit for the same gear and/or subarea in the limited entry fishery, called the '50–percent monthly limit.'" The annual management measures are modified as follows:

1. For crossovers, paragraph A.(12)(b) of section IV. is revised to read as follows:

A. *General Definitions and Provisions.*

* * * * *

(12) * * *

(b) If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and takes and retains, possesses, or lands the same species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

* * * * *

2. For widow rockfish, paragraph B. of section IV. is amended as follows:

B. *Widow Rockfish* * * *

(1) *Limited entry fishery.* The cumulative trip limit for widow rockfish is 60,000 lb (27,216 kg) per vessel per 2-month period. The 60–percent monthly limit is 36,000 lb (16,329 kg).

(2) *Open access fishery.* Within the limits at paragraph IV.I. for the open access fishery, the 50–percent monthly limit for widow rockfish is 30,000 lb (13,608 kg).

3. For bocaccio, paragraph C. of section IV. is amended as follows:

C. *Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)*

* * * * *

(2) * * *

(a) * * *

(ii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes*

complex taken and retained south of Cape Mendocino is 150,000 lb (68,039 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 10,000 lb (4,534 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(iii) The 60–percent monthly limits are: For the *Sebastes* complex, 18,000 lb (8,165 kg) north of Cape Mendocino, and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 3,600 lb (1,633 kg) north of Cape Mendocino; for bocaccio south of Cape Mendocino, 6,000 lb (2,722 kg); and for canary rockfish coastwide, 8,400 lb (3,810 kg).

* * * * *

(3) *Open access fishery.* If smaller than the limits at paragraph IV.I., the following cumulative monthly trip limits apply (within the limits at paragraph IV.I.): For the *Sebastes* complex, 15,000 lb (6,804 kg) north of Cape Mendocino, and 75,000 lb (34,019 kg) south of Cape Mendocino; for yellowtail rockfish, 3,000 lb (1,361 kg) north of Cape Mendocino; for bocaccio, 5,000 lb (2,268 kg) south of Cape Mendocino; and, for canary rockfish, 7,000 lb (3,175 kg) coastwide.

4. For Dover sole, thornyheads, and the DTS complex, paragraph E. of section IV. is amended as follows:

E. *Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish*

* * * * *

(2) * * *

(b) * * *

(i) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 57,000 lb (25,855 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, no more than 30,000 lb (13,608 kg) may be Dover sole, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 100,000 lb (45,359 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(iii) The 60–percent monthly limits are: For the DTS complex, 34,200 lb (15,513 kg) north of Cape Mendocino, and 60,000 lb (27,216 kg) south of Cape Mendocino; for trawl-caught sablefish coastwide, 7,200 lb (3,266 kg); for Dover sole north of Cape Mendocino, 18,000 lb (8,165 kg); for both species of thornyheads combined coastwide, 9,000 lb (4,082 kg); and for shortspine thornyheads coastwide, 1,800 lb (816 kg).

* * * * *

(c) * * *

(i) *Daily trip limit.* The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg), not to exceed 5,100 lb (2,313 kg) per calendar month, and south of 36° N. lat. is 350 lb (159 kg) with no additional limit on the amount of sablefish that may be retained in a month. The daily trip limit, which applies to sablefish of any size, is in effect until the closed periods before or after the regular season (as specified at 50 CFR 660.323(a)(2)(i) (formerly 50 CFR 663.23(b)(2)), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season.

* * * * *

(3) *Open access fishery.* Within the limits in paragraph IV.I. below, a vessel in the open access fishery is subject to the 50–percent monthly limits, which are as follows: For the DTS complex, 28,500 lb (12,927 kg) north of Cape Mendocino, and 50,000 lb (22,680 kg) south of Cape Mendocino; for Dover sole north of Cape Mendocino, 15,000 lb (6,804 kg); south of Pt. Conception, for both species of thornyheads combined, 7,500 lb (3,402 kg) of which no more than 1,500 lb (680 kg) may be shortspine thornyheads. (The open access fishery for thornyheads is closed north of Pt. Conception.) * * *

5. For bocaccio taken in the open access fishery, paragraph I. of section IV. is amended as follows:

I. *Trip Limits in the Open Access Fishery* * * *

(1) * * *

(b) * * *

(i) *Hook-and-line or pot gear:* 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 250 lb (113 kg) per trip, not to exceed 2,000 lb (907 kg) cumulative per month, may be bocaccio taken and retained south of Cape Mendocino.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need for immediate action to slow the rate of harvest of the species discussed above, and because the public had an opportunity to comment on the action at the April 1997 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

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

Dated: May 1, 1997.

Gary C. Matlock,

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

[FR Doc. 97–11790 Filed 5–1–97; 4:54 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 88
Wednesday, May 7, 1997

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.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chaper XIII

Notice of Special Meeting for Action on Proposed Rule

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of special meeting for action on proposed rule.

SUMMARY: The Compact Commission will hold a Special Meeting to review comment on the Proposed Rule to adopt a compact over-order price regulation issued on April 28, 1997 and to debate whether to adopt the proposed rule as a final rule in light of the comment received. The Commission will also consider certain matters relating to administrative matters and the referendum procedure.

DATES: The meeting is scheduled for May 14, 1997 commencing at 10 am to adjournment.

ADDRESSES: The meeting will be held at the Holiday Inn, Capitol Conference Room, 172 North Main, Concord, NH. (Exit 14 off Interstate 93.)

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT, 05601–1058. Telephone 802–229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold a Special Meeting, pursuant to Article V(C)(3) of the Northeast Interstate Dairy Compact, to debate the adoption of a compact over-order price regulation as a final rule.

On April 16, 1997 the Northeast Dairy Compact Commission adopted a Proposed Rule to establish a Compact Over-Order Price Regulation, as published in 62 FR 23031, April 28, 1997. At the Special Meeting, the Compact Commission will consider the comment received on the proposed rule. The Commission will also debate whether to adopt the proposed rule as a final rule, in light of the comment received.

The Commission will also consider and possibly act upon certain matters relating to its administrative operation and the referendum procedure.

Authority: (a) Article V, Section 11 of the Northeast Interestate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agricultural Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997.

(b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.

Daniel Smith,

Executive Director.

[FR Doc. 97–11844 Filed 5–6–97; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 321, and 330

[Docket No. 97–010–1]

Foreign Potatoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations concerning imported plants and plant products to prohibit the importation of potato tubers from Bermuda and to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These changes appear necessary to prevent the introduction of foreign potato diseases and insect pests into the United States. We are also proposing to reorganize and streamline the regulations concerning the importation of potatoes into the United States. These changes would remove unnecessary regulations and relieve restrictions that no longer appear warranted.

DATES: Consideration will be given only to comments received on or before July 7, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–010–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–010–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Import-Export Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301)–734–6799; fax (301)–734–5786; E-mail: jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning the importation of foreign potato tubers are contained in 7 CFR part 321, Restricted Entry Orders, Subpart—Foreign Potatoes (referred to below as the Foreign Potatoes regulations). The Foreign Potatoes regulations allow the importation of potato tubers from Bermuda and Canada (except for Newfoundland and a portion of South Saanich, British Columbia) without restriction. The Foreign Potatoes regulations also contain provisions for importing potato tubers from other countries that are free of injurious potato diseases and insect pests that are new to or not widely distributed throughout the United States. At present there are no countries considered free of injurious potato diseases and insect pests except Bermuda and parts of Canada.

The regulations concerning the importation of foreign potato plants are contained in 7 CFR 319.37 through 319.37–14, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products (referred to below as the Nursery Stock regulations). The Nursery Stock regulations prohibit the importation of potato plants from all parts of the world except Canada.

The regulations concerning the importation of most foreign fruits and vegetables are contained in 7 CFR 319.56 through 319.56–8, Subpart—Fruits and Vegetables (referred to below

as the Fruits and Vegetables regulations). The Fruits and Vegetables regulations refer readers to the Foreign Potatoes regulations for rules governing the importation of potatoes.

The Foreign Potatoes, Fruits and Vegetables, and Nursery Stock regulations are intended to prevent the introduction of foreign plant diseases and insect pests into the United States.

We are proposing to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia; Canada. As noted above, potato tubers are already prohibited importation into the United States from Newfoundland and South Saanich, British Columbia. The reference to South Saanich, British Columbia is incorrect; the reference should be to Central Saanich and we are changing "South Saanich" to "Central Saanich" in this proposed rule. Potato tubers are prohibited because of potato wart disease in Newfoundland and golden nematode in a portion of Central Saanich. Potato wart disease may be carried by both potato plants and potato tubers. Although golden nematode is associated with tubers, the Canadian government currently prohibits the movement of both potato plants and tubers from the affected portion of Central Saanich. This change would bring our regulations in line with Canada's prohibition and simplify the regulations. This action would have no impact on trade because Canada already prohibits the movement of potato plants and tubers from this portion of Central Saanich and Newfoundland. This change would be reflected in the Nursery Stock regulations, § 319.37–2(a), in the list of prohibited articles.

We are also proposing to prohibit the importation of potato tubers from Bermuda. Because Bermuda's regulations allow for the importation of seed potatoes from countries other than the United States and Canada, potato tubers grown in Bermuda could present a pest and disease risk if imported into the United States. This action will have little, if any, impact on trade, as there have been no requests to import potato tubers from Bermuda, no record of shipments of potato tubers from Bermuda, and Bermuda has no potato tuber production for export.

Further, we are proposing to move the prohibitions on the importation of potato tubers from Bermuda, parts of Canada (Newfoundland and a portion of Central Saanich, British Columbia), and all other parts of the world, from the Foreign Potatoes regulations to the Nursery Stock regulations (see proposed § 319.37–2(a)). In conjunction with this change, we propose to remove Restricted Entry Orders, Subpart—Foreign Potatoes, since the remainder of the regulatory text appears to be unnecessary. As explained above, the remainder of this text contains provisions for importing potato tubers from countries other than Canada or Bermuda. The importation of potatoes from countries other than Canada or Bermuda is prohibited. This would consolidate the regulations for importing foreign potatoes into one place and eliminate provisions that are not being used. We would amend the Fruits and Vegetables regulations to refer readers to the Nursery Stock regulations, rather than the Foreign Potatoes regulations, for rules governing the importation of potatoes.

Miscellaneous

The Federal Plant Pest regulations, contained in 7 CFR part 330, regulate the movement into the United States, and interstate, of various materials, including soil, to prevent the dissemination of plant pests. Section 330.300a contains provisions concerning Canadian origin soil. The section refers to the Land District of South Saanich on Vancouver Island of British Columbia. The reference to "South Saanich" is incorrect and should be changed to "Central Saanich." We are proposing this change in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would move the prohibitions on importing potato tubers from part 321 to subpart 319.37, prohibit the importation of potato tubers from Bermuda, and prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These actions are not expected to have any economic impact. There have been no requests to import potato tubers from Bermuda, no record of shipments of potato tubers from Bermuda, and Bermuda has no potato tuber production for export. Canada does not allow potato tubers or plants to move from Newfoundland or the portion of Central Saanich that would be covered by our proposed rule due to the presence of potato wart disease and golden nematode.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly title 7, Chapter III, would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.37–2 paragraph (a), the table would be amended by revising the entry for Solanum spp. (potato) to read as follows.

§ 319.37–2 Prohibited Articles

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
• •	• •	• •
Solanum spp. (potato) (tuber bearing species only—Section Tuberarium), including potato tubers.	All except Canada (except Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road.	Andean potato latent virus; Andean potato mottle virus; potato mop top virus; dulcamara mottle virus; tomato blackring virus; tobacco rattle virus; potato virus Y (tobacco veinal necrosis strain); potato purple top wilt agent; potato marginal flavescence agent; potato purple top roll agent; potato witches broom agent; stolbur agent; parastolbur agent; potato leaflet stunt agent; potato spindle tuber viroid; arracacha virus B; potato yellowing virus.
• •	• •	• •

* * * * *

3. In § 319.56–2, footnote 1 and the reference to it would be removed, footnote 2 and the reference to it would be redesignated as footnote 1, and paragraph (c) would be revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(c) Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; *provided,* that potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37–2 of this part.

* * * * *

PART 321—RESTRICTED ENTRY ORDERS [REMOVED]

Under the authority of 7 U.S.C. 136, 136a, 154, 159, and 162, 7 CFR, Chapter III, would be amended by removing "Part 321—Restricted Entry Orders."

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

4. The authority citation for part 330 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.22, 2.80, and 371.2(c).

5. In § 330.300a, the words "South Saanich" would be removed and the words "Central Saanich" would be added in their place.

Done in Washington, DC, this 1st day of May 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11886 Filed 5–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–38–112 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 The New Piper Aircraft, Inc. (Piper) Model PA–38–112 airplanes with serial numbers (S/N) 38–80A0166 through 38–82A0122. The proposed action would require repetitively replacing the upper rudder hinge bracket, part number (P/N) 77610–03. Reports of fatigue cracks occurring on the upper rudder hinge bracket (P/N 77610–02), and the manufacture of a new upper rudder hinge bracket (P/N 77610–03) with a life limited improved design prompted the proposed action. The actions specified by the proposed AD are intended to prevent cracks in the upper rudder hinge bracket, which, if not detected and corrected, could result in separation of the rudder from the airplane and loss of control of the airplane.

DATES: Comments must be received on or before July 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, *Attention:* Rules Docket No. 96–CE–53–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 applies to the proposed AD may be obtained from The New Piper Aircraft Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362, facsimile (404) 305–7348.

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. 96–CE–53–D." 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. 96–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of the Piper Model PA–38–112 airplanes having fatigue cracks on the upper rudder hinge bracket. These reports prompted issuance of AD 80–22–12 which mandates replacing the upper rudder hinge bracket, part number (P/N) 77610–02, on Model PA–38–112 (serial numbers (S/N's) 38–78A0001 through 38–80A0165), with a bracket of improved design. Based on fatigue analysis, the improved upper rudder hinge bracket (P/N 77610–03) withstands fatigue for a longer time, but is still life limited and should be replaced at regular intervals.

Since issuance of AD 80–22–12, Piper has manufactured additional Model PA–38–112 airplanes. These new airplanes have the improved upper rudder hinge bracket (P/N 77610–03) installed at the factory, but the owners are not required to change the bracket at regular intervals either by regulation or regular maintenance.

While conducting a review of the Piper Model PA–38–112 Type Certificate Data Sheet (TCDS) A18SO, the FAA discovered that the Piper Model PA–38–112 airplanes manufactured after the issuance of AD 80–22–12 should be replacing the upper rudder hinge bracket (P/N 77610–03) at regular intervals as well.

Relevant Service Information

Piper previously issued Service Bulletin No. 686, dated May 23, 1980, which specifies procedures for removing and replacing the rudder upper hinge brackets, P/N 77610–03. This service bulletin is also applicable to this proposed action.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the review, tests, reports of fatigue cracks and service information described above, the FAA has determined that AD action should be taken to prevent cracks in the upper rudder hinge bracket, which if not detected and corrected, could result in separation of the rudder from the airplane and loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Model PA–38–112 airplanes of the same type design, the proposed AD would require repetitively replacing the upper rudder hinge bracket, P/N 77610–03, with a new upper rudder hinge bracket, P/N 77610–03, at the total accumulation of 5,000 hours time-in-service (TIS), or within the next 100 hours TIS, whichever occurs later, and then continue to replace the part at 5,000 hour TIS intervals thereafter.

Cost Impact

The FAA estimates that 153 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,540. The manufacturer has informed the FAA that none of the owners/operators of the affected airplanes have accomplished the proposed action.

Regulatory Impact

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The New Piper Aircraft, Inc.: Docket No. 96–CE–53–AD.

Applicability: Model PA–38–112 airplanes (serial numbers 38–80A0166 through 38–82A0122), certificated in any category.

Note 1: The serial numbers listed in the applicability section of this AD do not match the serial numbers in Piper Aircraft Corporation Service Bulletin (SB) No. 686, dated May 23, 1980. This AD takes precedence over Piper SB 686, dated May 23, 1980.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon the accumulation of 5,000 hours total time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later after the effective date of this AD, and thereafter at intervals not to exceed 5,000 hours TIS, unless already accomplished.

To prevent cracks in the upper rudder hinge bracket, which if not corrected, could result in separation of the rudder from the airplane and loss of control of the airplane, accomplish the following:

(a) Remove and replace the upper rudder hinge bracket, part number (P/N) 77610–03, with a new upper rudder hinge bracket, P/N 77610–03 in accordance with the Instructions section of Piper SB No. 686, dated May 23, 1980.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive

compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960 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 April 29, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11778 Filed 5–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM97–3–000]

Research, Development, and Demonstration Funding

April 30, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is amending its research, development, and demonstration (RD&D) regulations at 18 CFR 154.401, to propose a new funding mechanism for the Gas Research Institute. The Commission is proposing a mechanism that would fund "core" RD&D programs that benefit gas consumers through a nondiscountable, non-bypassable volumetric surcharge on all pipeline throughput. Voluntary funding would continue for all other GRI programs.

DATES: GRI's comments are due on or before May 30, 1997. All other comments are due on or before June 30, 1997.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mary E. Benge, Office of the General Counsel, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426, (202) 208–1214;

Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

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The Federal Energy Regulatory Commission is proposing to amend its Research, Development, and Demonstration (RD&D) regulations at 18 CFR 154.401, to propose a new funding mechanism for the Gas Research Institute (GRI). For the reasons discussed below, the Commission is proposing a mechanism that would fund GRI "core" RD&D programs that benefit gas consumers through a nondiscountable, non-bypassable, volumetric surcharge on all jurisdictional pipeline throughput. Voluntary funding would continue for all other GRI programs.

I. Background

A. History of RD&D Funding

The concept of a cooperative RD&D organization funded by the natural gas industry evolved during a time of uncertainty in the industry, when the excess of demand for natural gas over the supply became apparent in the late 1960s and progressively through the 1970s.[1] During that period, the industry's RD&D was initially conducted by individual jurisdictional companies, with some collective RD&D conducted under the auspices of the American Gas Association (AGA).

In light of gas shortages and rapidly increasing gas prices, the Commission sought to reduce, or at least curb, the demand, and to augment the supply.[2] The Commission began a series of initiatives to stimulate RD&D efforts by jurisdictional companies and to encourage jurisdictional companies to support RD&D organizations which, in turn, would be broadly supported by energy industry sectors.

The Commission recognized a lack of concentrated and coordinated RD&D effort by the natural gas industry to relieve the curtailment of service then being experienced by natural gas pipelines.[3] The Commission also cited the difficulty in reviewing research projects individually to test their reasonableness. Thus, in Order No. 566,[4] the Commission decided to clarify the Commission's review and accounting procedures and provide for simplified proceedings before the Commission by allowing advance approval of RD&D programs of organizations funded by jurisdictional companies.

In 1976, GRI was formed in response to the Commission's challenge in Order No. 566, with its purpose to serve the mutual interests of the gas industry and gas consumers. GRI is a nonprofit organization that sponsors RD&D in the fields of natural gas and manufactured

[1] Gas Research Institute, Opinion No. 11, 2 FERC ¶61,259 (1978) (Approving GRI's initial RD&D program).

[2] *Id.* at 61,616.

[3] *Id.* at 61,617.

[4] Research, Development and Demonstration; Accounting; Advance Approval of Rate Treatment, Opinion No. 566, Order Prescribing Changes in Accounting and Rate Treatment for Research, Development and Demonstration Expenditures, 58 FPC 2238 (1977).

gas. GRI does not engage directly in RD&D activities. It is a planning and management organization which engages in such activities through RD&D project contracts with laboratories, universities and others. In Opinion No. 11, the Commission authorized GRI to undertake a program of RD&D with the objective of ameliorating the shortage of natural gas, improving the economics and operation of the gas industry, and developing improved conservation technology.[5]

GRI's program was designed to provide broad, widely dispersed benefits that could not be captured by individual companies, or even groups of companies within the gas industry.[6] At its inception, GRI expected to become the principal organization for cooperative RD&D in the natural gas industry, and expected most of the major gas pipelines and utility systems to become its members,[7] and these expectations were met. For this reason, the Commission believed that formation of GRI was the best way to achieve the Commission's RD&D objectives.

Because of the generalized benefits derived from cooperative RD&D programs sponsored by GRI, the Commission, in Opinion No. 11,[8] adopted the policy of:

* * *spreading the expenditures for [GRI's] RD&D program as evenly as possible and over the broadest possible base of jurisdictional and non-jurisdictional natural gas services in this country. Since consumers of natural gas in particular, and Federal taxpayers generally, are expected to benefit from the results of GRI's RD&D program, it is proper that they should pay for the program. But since producers, pipelines, and distributors also have a stake in the results of the program, it is proper that they too should pay for it * * *.

The Commission reiterated that GRI funding is fair if costs are spread among those who will derive the benefits of GRI RD&D. The Commission indicated that it "expect[ed] GRI to make every effort to obtain the broadest equitable funding."[9]

The Commission has taken the position that gas consumers stand to gain from aggressive RD&D, and therefore should share in the costs of GRI funding. In *Public Utilities Commission of Colorado* v. *FERC*,[10] the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's authority to take into account even nonjurisdictional RD&D activities in setting rates. In response to the argument that certain end-use RD&D concerning such products as gas appliances, furnaces, and water heaters, was not justified, the Court held that end-use research has as its goal the conservation of natural gas, and that such RD&D is "a means of enhancing natural gas supplies and keeping consumer rates down,"[11] and that such RD&D was therefore "within [the Commission's NGA] Section 4 authority to promote."[12] However, the Commission is mindful that ratepayers required to pay for RD&D must receive tangible benefits from that RD&D. In *Process Gas Consumers Group* v. *FERC (PGC I)*,[13] the Court held that the Commission had inadequately addressed the issue of whether GRI's end-use research projects had a reasonable chance of benefiting the ratepayer in "a reasonable amount of time."[14] The Court instructed the Commission to use a balancing test to determine whether "the research, if successful, will work to the benefit of existing classes of ratepayers—those customers paying for the research in the first place."[15]

As competition has increased in the natural gas market, it has become increasingly difficult to fund GRI in a manner that takes into account the diverse interests of the various industry sectors. From 1978 through 1992, interstate pipeline members recovered their GRI funding costs entirely through a uniform volumetric surcharge applied to each unit of throughput. The Commission approved this method of funding GRI programs because it met the Commission's two original aims: to ensure stable GRI funding while spreading the costs of research as evenly as possible and over the broadest possible base of natural gas service.[16] The use of a surcharge on a regulated price ensured that ratepayers ultimately paid GRI's research costs. Pipelines simply acted as conduits for funds from customers to GRI.[17] The addition of a volumetric surcharge to a pipeline's maximum rates did not affect the pipeline's revenue stream.

Beginning in the late 1980s, changes in the industry began to affect the viability of the uniform volumetric surcharge, by which pipelines recovered the GRI costs from ratepayers. In an era of competitive pricing, a pipeline might no longer be able to recover the entire surcharge from its customers since customers were able to demand a discounted rate. Under the original funding mechanism, each interstate pipeline member of GRI was allocated a portion of GRI's annual costs as an annual funding obligation that the pipeline was required to remit to GRI regardless of whether it actually collected that amount from its customers.

Beginning in 1992, GRI sought to change its funding mechanism after two members of GRI, ANR Pipeline Company and United Gas Pipeline Company, resigned from GRI membership. These pipelines maintained that discounting had caused them to underrecover their GRI funding obligations, and that their stockholders were paying those underrecovered costs.[18] GRI feared that other pipeline members would resign from GRI rather than fund the remainder of GRI's costs.

Ultimately, the Commission approved a settlement that put in place the current funding mechanism.[19] The settlement funding mechanism originally was approved on a temporary basis, for pipeline recovery of GRI's 1994 and 1995 program funding.[20] The funding mechanism was later extended for another two years, through the end of 1997, in order to give GRI and the industry sufficient time to develop a permanent funding mechanism.[21]

In approving the settlement, the Commission found that pipelines had been absorbing GRI costs and that the pipelines needed the flexibility to discount the GRI surcharge to compete with other sources of energy that do not carry the surcharge. Based upon these findings, as well as the fact that the Commission had rejected mandatory pipeline shareholder contributions in the past, the Commission accepted the proposal to allow pipelines to discount the GRI surcharge, to discount it first, and to remit to GRI only those GRI funds that they actually recovered.[22] In these ways, the settlement funding mechanism differed from any that had

[5] Opinion No. 11, 2 FERC at 61,616.

[6] *See* March 21, 1997 GRI Advisory Council Position, Docket No. RP97–149–000 at 1.

[7] Opinion No. 11, 2 FERC at 61,621.

[8] *Id.* at 61,635.

[9] *Id.* at 61,635–6.

[10] Pub. Util. Comm'n of Colo. v. FERC, 660 F.2d 821 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 944 (1982).

[11] *Id.* at 828.

[12] *Id.* at 828 n. 13.

[13] 866 F.2d 470 (D.C. Cir. 1989).

[14] 866 F.2d at 471, *quoting* the Commission's existing RD&D regulations.

[15] 866 F.2d at 474.

[16] Gas Research Institute, 60 FERC ¶ 61,203 at 61,702 (1992), *aff'd*, 61 FERC ¶ 61,121 (1992).

[17] *See In Re Columbia Gas Sys. Inc.*, 997 F.2d 1039, 1062 (3rd Cir. 1993).

[18] *See* ANR Pipeline Co., 58 FERC ¶ 61,228 (1992), *reh'g denied*, 59 FERC ¶ 61,095 (1992); and unpublished letter order issued on December 31, 1991, in United Gas Pipe Line Co., Docket No. TM92–11–000.

[19] Gas Research Institute (GRI), 62 FERC ¶ 61,280 (1993); *reh'g denied*, 63 FERC ¶ 61,316 (1993) (approving contested settlement).

[20] *GRI*, 63 FERC at 63,146.

[21] Gas Research Institute, 71 FERC ¶ 61,130 (1995).

[22] *GRI*, 62 FERC at 62,805.

been in place previously. The new funding mechanism was, for the first time, "voluntary" in the sense that it permitted pipelines to discount without having to absorb GRI costs.

The voluntary funding under the settlement raised the policy question whether responsibility for GRI funding would be shifted unfairly from discounted customers to captive customers that do not receive discounted service. In approving GRI's interim funding proposal for 1993, which also included voluntary funding, the Commission acknowledged that cost shifting would necessarily ensue, but nonetheless concluded that because of the mitigating factors built into the settlement, "[t]he proposed funding mechanism balances the costs of GRI among all classes of service, localities, pipelines, producers and GRI. This is a fair result," the Commission concluded, "given that all of these parties benefit from GRI programs."[23]

The United States Court of Appeals for the District of Columbia Circuit, in *Public Utilities Commission of California* v. *FERC*,[24] upheld the Commission's approval of the settlement. In doing so, the Court addressed arguments that the Commission's approval constituted undue discrimination and amounted to an abdication of its duty to protect consumers. The Court concluded that given the underlying desirability of GRI itself, which had not been challenged, the Commission could not be expected to revisit its earlier determination that GRI inured to the benefit of all ratepayers, and that the question to be addressed then became "how GRI could remain viable."[25] The Court held that the funding mechanism chosen was reasonably designed to achieve the valid purpose for which it was intended.

Thus, for the past several years since the Commission's approval of the settlement funding mechanism, GRI has been funded through a temporary mechanism. The Commission's objective in this proceeding is to develop a permanent GRI funding mechanism that will provide GRI with sufficient stability to continue its RD&D with a view toward long-term, as well as short-term, goals. The Commission is also guided by the underlying objective of spreading the responsibility for funding the RD&D sponsored by GRI over the broadest possible base because the benefits go to gas consumers generally.

[23] *GRI*, 60 FERC at 61,702.

[24] Pub. Util. Comm'n of Cal. v. FERC, 24 F.3d 275 (D.C. Cir. 1994).

[25] *Id.* at 281.

B. Problems With Voluntary Funding

The problems raised with respect to voluntary funding, as approved in the settlement, continue to exert stress on the GRI funding mechanism. Essentially, funding for GRI has become less broad-based and less stable than ever. Pipelines, such as Koch Gateway Pipeline Company, continue to express a desire to resign from GRI.[26]

In a recent statement of its position on funding, GRI has indicated that the existing voluntary funding is no longer viable for long-term funding as competitive pressures continue to grow.[27] GRI asserts that consumer needs for technology are no longer met at the currently reduced levels of spending in the industry. Furthermore, GRI contends that its annual evaluation of consumer benefit/cost of unfunded programs continues to show that many beneficial projects are unfunded at current GRI levels. GRI also contends that industry RD&D needs also are not fully met.

GRI recently submitted a new proposed funding mechanism for 1998–1999 through which its pipeline members would collect amounts to be remitted to GRI to satisfy its research budget.[28] GRI proposed a two-part funding mechanism, which would include a pipeline surcharge to be levied on each unit of gas transported or sold, and an LDC delivery charge, which would be levied on LDCs and intrastate pipelines. GRI's proposal met with considerable protests. Many of those protests raised the issue whether the delivery charge and the volumetric surcharge would unfairly shift GRI's costs to LDCs, intrastate pipelines, and the pipelines' captive customers.

The Commission decided to convene a public conference in that proceeding to discuss not only GRI's proposal, but to foster a more far-ranging public policy discussion of the future of GRI.

C. Public Conference

The Commission convened a public conference on March 21, 1997, to discuss the future funding of RD&D in the natural gas industry. A number of participants spoke on the advisability of continuing a voluntary funding mechanism. Many participants, at the conference or in written comments, expressed a need for mandatory funding for a core program involving RD&D in the interest of gas consumers.

[26] Koch Gateway Pipeline Co., 77 FERC ¶61,348 (1996), *reh'g pending*.

[27] GRI Position, filed March 19, 1997, in Docket No. RP97–149–000.

[28] Docket No. RP97–149–000, filed December 2, 1996.

While there were a few exceptions, such as the Pennsylvania Office of Consumer Advocate,[29] and The Fertilizer Institute,[30] the vast majority of conference participants, from all sectors of the industry, supported the continuation and vitality of GRI. The success of GRI's RD&D efforts was reflected in the American Gas Association's (AGA) comments. AGA's data showed natural gas' share of the new home heating market at 67 percent—the highest level in industry history.[31] AGA attributed this continued growth, in part, to an increased awareness of the environmental advantages of natural gas. But, AGA maintained, this growth is mainly due to the technological advances that allow the gas industry to compete successfully on the cost of gas, as well as on the efficiency, comfort, and performance of end-use heating equipment. Similarly, appliance manufacturers contended that without GRI-funded programs, manufacturers could be forced into abandoning a gas product line.[32] Participants such as the U.S. Environmental Protection Agency (EPA) pointed out that GRI continues to conduct important environmental RD&D that may be jeopardized if left solely to individual companies to support.[33]

The GRI Advisory Council (Advisory Council), which was set up at the Commission's urging to ensure that GRI adequately utilizes the viewpoints of scientific, engineering, economic, consumer, and environmental interests, also submitted comments concerning the funding of GRI. The Advisory Council asserted that there is little evidence to suggest that the natural gas industry will voluntarily fund the level of RD&D required to provide for the availability of gas supplies, low cost, safe delivery, and efficient use of gas.[34] Nor, the Advisory Council contended, does it appear that voluntary funding will sustain the high level of public benefit that has been received since the founding of GRI.[35] The Advisory Council also stated its belief that the GRI program has already been reduced below the level that is justified based on consumer benefit to cost analysis.[36]

[29] March 21, 1997 comments and Tr. 147–151.

[30] March 21, 1997 comments.

[31] March 25, 1997 comments at 2.

[32] Gas Appliance Manufacturers Association, March 21, 1997 comments.

[33] United States Environmental Protection Agency, March 20, 1997 comments.

[34] March 21, 1997 position of the GRI Advisory Council in Docket No. RP97–149–000.

[35] *Id.*

[36] *Id.*

Some participants continued to favor voluntary funding,[37] but many participants concentrated on the problems associated with voluntary funding. One such problem was discussed by Professor William R. Hogan, a member of the GRI Advisory Council and a member of the GRI board of directors, who addressed the Commission on his own behalf.[38] Professor Hogan explained that in this era of competition, voluntary funding renders GRI's program vulnerable to the classic "free-rider problem." Professor Hogan explained that under voluntary funding, all those contributing to pay for the research realize that they will still receive the benefits that flow from the research, even if they do not pay their individual contribution. When everyone follows this strategy, Professor Hogan explained, there is no funding, and the research is not undertaken. Professor Hogan concluded that it would be unrealistic to think that GRI's widely dispersed benefits are going to be paid in any other way than through a mandatory program. These comments were echoed by Mr. Henry R. Linden, of the Illinois Institute of Technology.[39]

While most participants were reacting to GRI's latest funding proposal, some participants proposed new funding mechanisms. For example, Mr. Leslie B. Enoch, speaking on behalf of the American Public Gas Association (APGA), spoke in favor of a return to the use of a volumetric surcharge to fund GRI. Mr. Enoch asserted that such funding accomplishes three objectives: it is simple; it is in the interest of all segments of the natural gas industry; and it is equitable. Mr. Enoch pointed out that the benefits of RD&D are unrelated to discounts, so, likewise, the funding should not be affected by discounts.

It was also suggested that the Commission take the approach of funding GRI through a combination of mandatory and voluntary funding mechanisms. Mr. Warren Mitchell,[40] representing Southern California Gas Company, suggested a combination of mandatory and voluntary funding. He spoke in support of the funding of consumer interest, or core, programs, through a volumetric, mandatory, nondiscountable usage charge assessed on all throughput as a stable, secure, and equitable funding for these programs. Mr. Mitchell also advocated a separate, discountable, voluntary mechanism for other programs.

II. Discussion

A. The Commission's Proposed GRI Funding Mechanism

The industry has begun to veer from the objective of broad-based funding for RD&D as GRI is losing funding and pipelines are drawing away from supporting GRI economically. The public conference, while not resulting in a consensus on the appropriate mechanism for GRI funding, showed that there is a widely held view that RD&D continues to be in the best interests of natural gas consumers, and that cooperative RD&D through GRI continues to be the best means of approaching RD&D in the gas industry.

It has been more than twenty years since the formation of GRI. The Commission continues to firmly hold the view that GRI's programs benefit natural gas consumers and that there is a need to ensure broad-based and stable funding for consumer-oriented GRI programs. The natural gas technologies developed with GRI funding over the past decade have enabled the natural gas industry to reduce the costs of gas to all classes of consumers. Moreover, new end-use technologies have provided gas customers with improved energy efficiency, lower energy bills, and more productive ways of utilizing energy resources in residential and business applications.

The Commission shares the concerns of those who believe that the continuation of voluntary funding threatens the RD&D efforts of GRI. The limits of voluntary funding for GRI, in the more than three years that the temporary voluntary funding mechanism has been in place, have been explored. The Commission agrees with the Advisory Council that there is little evidence to suggest that the natural gas industry will voluntarily fund the level of RD&D required to provide for availability, low cost, safe delivery, and efficient use of natural gas. Nor will voluntary funding sustain the high level of public benefit that has been received since the founding of GRI. The GRI program has already been reduced below the level that is justified based on an analysis of consumer benefit relative to cost.

The Commission continues to be guided by the original goals of funding the generalized benefits of GRI's RD&D programs—to ensure stable GRI funding while spreading the responsibility for funding research as evenly as possible and over the broadest possible base of natural gas service. Rather than adopt GRI's post-1997 funding mechanism,[41] the Commission proposes a new, permanent funding mechanism to spread the responsibility for funding RD&D widely in the natural gas industry.

The Commission is persuaded that the need for stable GRI funding requires that at least some of GRI's funding must be mandatory. In order for the responsibility for the funding to be as broadly-based as possible, the Commission believes that it should be secured, at least in part, through a volumetric surcharge, as in the past. However, the Commission also recognizes that in a competitive market, pipelines must have the flexibility to discount their rates.

Thus the Commission proposes to fund RD&D that is of primary benefit to gas consumers as a group through a "core" RD&D program. The core RD&D program would be comprised of RD&D activities that produce broadly-dispersed benefits flowing predominantly to gas consumers, and that cannot be readily captured by industry sectors. The core program would be funded by a mandatory, non-bypassable, non-discountable volumetric funding surcharge levied on all volumes transported by interstate pipelines, regardless of the pipelines' membership status in GRI. This surcharge would ensure stable and equitable funding for gas consumer-interest programs.

GRI has proposed that other RD&D, that primarily benefits a specific industry sector, would be funded through voluntary funding.[42] The voluntarily funded RD&D programs would consist of RD&D activities that produce less widely-dispersed benefits to more limited categories, such as individual consumers, groups of consumers, industries, or groups of companies within an industry. GRI proposed these programs to be funded by two means. One would be a separate charge in the pipelines' tariffs which shippers could choose to pay. Those shippers who chose to pay the charge to contribute to this fund, called a "Technology Management" fund, would be able to participate in governance over the management of the fund. It was suggested at the conference that it is appropriate to make such non-core RD&D funding subject to Commission oversight, rather than to leave it to GRI to design its own funding mechanism or establish a voluntary RD&D contract

[37] See March 20, 1997 comments of the Wisconsin Distributor Group, the Northern Distributor Group, and PNM Gas Services.

[38] March 20, 1997 comments; Tr. at 39–40.

[39] Tr. at 46–47.

[40] Tr. at 102–5.

[41] Filed December 2, 1996, in Docket No. RP97–149–000.

[42] GRI Position, filed March 19, 1997, in Docket No. RP97–149–000, at 2.

service.[43] GRI's proposed Technology Management charge is consistent with this view. Accordingly, the Commission requests comments on GRI's proposal to fund non-core RD&D through a Technology Management charge, paid only by shippers that willingly elect to pay for GRI RD&D over-and-above the core program. The Commission also invites industry participants to comment on the need for any Commission involvement with the non-core program and the appropriateness of including any funding for the non-core program in pipeline rates.

As an alternative to GRI's proposal, shippers could make voluntary contributions to fund the Technology Management program by agreeing to make payments directly to GRI. Another possibility would be for shippers to arrange to pay a designated amount to the pipeline. The pipeline would then, acting as a conduit, remit the same amount to GRI. The pipeline could file with the Commission an amendment to its contract with such a shipper in order to specify the amount of the contribution.

The other way GRI proposes to fund the Technology Management program is voluntary pipeline contributions. If a pipeline chooses to contribute to the voluntarily funded program, GRI proposes that the pipeline would be able to include those contributions in the pipeline's operating budget that is used in setting the pipeline's rates in a rate case.[44] The Commission requests comment on whether to permit pipelines to obtain recovery in their rates of their own voluntary contributions as GRI proposes.

The Commission, at this time, can only estimate the budget requirements for the core RD&D program. GRI states in its March 19, 1997 position paper that it has identified $90 million of its 1997 RD&D projects in the areas of environment, safety, basic research, and pro-competitive research related to emerging gas supplies and energy efficiency. Projects of this type are examples of what the Commission would consider to be part of the core program.

In order to identify which RD&D projects would be in the core program and which would be in the voluntary program, the Commission has looked to GRI's 1997–2001 Research and Development Plan. GRI has broken down its RD&D program into smaller groups called "Business Units", as shown in Exhibit 1 of its 1997–2001 Research and Development Plan. All of GRI's individual RD&D projects are distributed among these business units.

GRI's twelve RD&D business units are as follows:

(1) Basic Research,
(2) Commercial,
(3) Distribution,
(4) Environment and Safety,
(5) Industrial,
(6) Market and Strategic Collaboration and Technology Transfer,
(7) Natural Gas Vehicles,
(8) Power Generation,
(9) Residential,
(10) Strategic Collaboration,
(11) Supply, and
(12) Transmission.

Certain RD&D activities within the individual business units would appear to fall easily into one of the two proposed RD&D programs. For example, RD&D within the Basic Research and Environment & Safety business units would likely belong in the core program, while RD&D within the Commercial, Industrial, Natural Gas Vehicles, and Power Generation business units would probably be more appropriately funded through the voluntary program. GRI estimates the budget for what appears to be non-core RD&D as ranging from $45–70 million.[45]

Some RD&D might contain elements of both the core and voluntary programs, *e.g.*, those activities in GRI's Distribution, Market & Strategic Collaboration and Technology Transfer, Residential, Strategic Collaboration, Supply and Transmission business units. For this reason, only activities within the business units which relate to environment, safety, basic research, and generic supply and energy efficiency efforts, would be included in the core program, with the remainder of the activities to be included in the voluntary program.

The business unit approach is just one of many possible methods which may be used to identify elements of a core RD&D program. The Commission requests GRI to submit a proposed division of categories, and a description of the types of projects GRI would include in each category. Interested persons may then submit comments on the business unit approach and GRI's proposal, if different, and suggest other possible methods of determining how GRI's RD&D activities should be divided into the two proposed core and non-core RD&D categories. Commenters are requested to define commercialization, as distinguished from basic RD&D which may have no immediate commercial application, and comment on whether it is necessary or appropriate for GRI's commercialization of technology to be funded by pipeline rates.

Regardless of the approach taken to classify projects for purposes of the proposed funding mechanism, once the two categories are in place, the Commission proposes to require GRI to file an annual application seeking approval for its core RD&D program. In this application, GRI would continue to file all of the detailed information necessary for advance approval and rate treatment as required by the Commission's existing regulations, and also show that its filing is consistent with Court and Commission precedent. In addition, GRI would be required to specifically identify which projects are to be included in the core program and which are in the voluntary program, along with the anticipated costs for each program broken down by individual project cost. Finally, GRI would have to state the surcharge proposed to support its program. The Commission intends to scrutinize individual core projects to ensure that gas consumers receive the benefits of such projects. Based upon such review, the Commission will determine the appropriate annual core program funding level.

As indicated above, the funding surcharge for the core program would be applied to every volume of gas (or dekatherm equivalent) transported by all regulated pipelines, and not just GRI members. Accordingly, GRI would be required to support its core program surcharge derivation using documented transportation volumes from the preceding year.

Contemporaneously with the issuance of this notice, the Commission is issuing an order in Docket No. RP97–149–000, extending the current GRI funding mechanism for one year, through 1998. Therefore, the funding mechanism the Commission is proposing here would become effective after 1998. Beginning with GRI's 1999 filing, the Commission will require GRI to file annually for

[43] At the conference, Mr. William Burnett, speaking on behalf of GRI, argued that the Commission's imprimatur as to the analysis of the benefits of Technology Management RD&D would assist state commissions in dealing with the passthrough of these costs by local distribution companies. Tr. at 131–4.

[44] GRI Position, filed March 19, 1997, in Docket No. RP97–149–000, at 2.

[45] In its position paper filed March 19, 1997, in Docket No. RP97–149–000, GRI indicates that a Technology Management surcharge is but one way of obtaining funding for the voluntary program. Specifically, GRI states that certain gas industry segments may not necessarily be shippers on interstate pipelines and consequently would not be positioned to pay the Technology Management surcharge. In these instances, GRI could be compensated for non-core RD&D in other ways. For example, pipelines could provide funding support for the non-core program by including the costs in their operating budgets, while producers (and others) could directly support the non-core program by cash or in-kind funding.

Commission approval of its programs. However, after the Commission, GRI, and the industry have gained sufficient experience with the proposed funding mechanism, the Commission will permit GRI to revert to the two-year planning cycle the Commission approved in Opinion No. 384.[46]

B. Changes to Regulations To Reflect GRI Mandatory Funding and Rate Treatment of Pipelines' Contributions to GRI

Section 154.401 of the Commission's regulations governing the rate treatment of RD&D expenditures[47] continues to reflect the Commission's initiatives in Order No. 566. The regulation contemplates RD&D projects by multiple jurisdictional companies although it does provide for RD&D conducted by organizations supported by more than one company. Since the advent of broadly funded RD&D projects that are centrally planned and managed by GRI, these regulations do not reflect actual practice. Consequently, the Commission proposes to replace Section 154.401(a).

Proposed Section 154.401(a) would require all natural gas companies to include in their tariffs a non-discountable, non-bypassable volumetric surcharge to be collected from shippers on their systems to fund the GRI core RD&D program. This charge will be required regardless of whether the natural gas company chooses to be a member of GRI or support non-core RD&D programs. In this manner, those programs which are primarily designed to benefit gas consumers will be assured of funding. Without such a mandatory funding mechanism for these core projects, the evidence is clear that funding of such projects is in jeopardy, and this is not acceptable to the Commission.

Section 154.401(b)(1) of the Commission's regulations currently provides that individual natural gas companies may apply for advance approval of rate treatment for RD&D expenditures. It also provides that an RD&D organization, such as GRI, that is supported by more than one company may submit an application that covers the organization's RD&D program, and that the Commission's approval of that application constitutes approval of the individual companies' contributions to the organization. In recent years, there have been no filings by individual companies for advance approval of rate treatment for RD&D expenses. Rather, virtually all requests for advance approval of RD&D expenses have been filed by GRI. Therefore, to reflect actual practice, the Commission proposes to revise Section 154.401(b) of its regulations.

Proposed Section 154.401(b)(1) would provide for the filing of applications for advance approval of RD&D expenditures only by GRI, or other RD&D organizations. Individual companies will be able to seek to recover other RD&D expenses beyond the amounts related to funding RD&D organizations as part of their general section 4 rate filings. Proposed Section 154.401(b)(2) would define "core" and "non-core" projects and would describe the requirements for funding core and non-core programs.

III. Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[48] FERC identifies the information provided under 18 U.S.C. Part 154 as FERC–545, Gas Pipeline Rates: Rate Change (non-formal).

Pursuant to Sections 4, 5 and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717c–717o, P.L. 75–688) and Part 154 of the Commission's regulations, natural gas companies must file tariffs that comprise schedules of all rates or charges identifying transportation or sales activities conducted by natural gas pipelines. Pursuant to the proposed rules contained in the instant NOPR, all natural gas companies having tariffs on file with the Commission would be required to file new tariff provisions reflecting the mandatory GRI surcharge. Such filings would be required annually.

The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–545	88	88	7.35	*647

*Rounded off.

Total Annual Hours for Collection (reporting + Recordkeeping, (if appropriate)) =647.

These estimates reflect only the incremental burden on companies not presently members of GRI. Inasmuch as those companies presently members of GRI must reflect a GRI surcharge in their tariffs now, there would be no significant change in the burden on those companies resulting from adoption of the rules proposed in this NOPR.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden, estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

The Commission also seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Costs (Operations & Maintenance) $32,350.

The currently valid OMB Control Number for the collection of information (*i.e.*, tariff filings) that would be required by the proposed rules is 1902–0154. Applicants shall not be penalized for failure to respond to these collections of information unless collection(s) of information display a valid OMB control number.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the Commission requirements. The Commission's Office of Pipeline Regulation will use the data included in these filings to verify the costs proposed to be recovered are just and reasonable and assists the Commission in carrying out its regulatory responsibilities under the Natural Gas Act. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the

[46] Gas Research Institute, Opinion No. 384, 65 FERC ¶ 61,027 (1993) at 61,367–8.

[47] 18 CFR 154.401.

[48] 44 U.S.C. 3507(d).

following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [*Attention:* Michael Miller, Division of Information Services, *Phone:* (202) 208–1415, fax: (202) 273–0873, *E-mail:* mmiller@ferc.fed.us

For submitting comments concerning the collection of information(s) and the associated burden estimate(s) please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285]

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[49] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[50] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[51] Therefore, neither an environmental impact statement nor an environmental assessment is necessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[52] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[53]

Pursuant to section 605(b), the Commission certifies that the proposed rules and amendments, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Because the Commission is seeking in the first instance comments from GRI on what will constitute "core projects," GRI must submit its comments no later than May 30, 1997. All other comments, including replies to the comments of GRI concerning its concept of "core projects," must be filed with the Commission no later than June 30, 1997. An original and 14 copies of comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM97–3–000. Additionally, comments should be submitted electronically. Participants can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM97–3–000 on the outside of the diskette.

Participants also are encouraged to participate in a Commission pilot project to test the use of the Internet for electronic filing either in conjunction with, or in lieu of, diskette filing. Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. RM97–3–000; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on the pilot project itself should be directed to Marvin Rosenberg at 202–208–1283, E-Mail address marvin.rosenberg@ferc.fed.us, but should not be sent to the E-Mail address for comments on the NOPR.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 154

Natural Gas Companies, Rate Schedules and tariffs.

By direction of the Commission. Commissioner Santa concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission gives notice of its proposal to amend Part 154, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

2. Sections 154.401(a), (b)(1) and (b)(2) are revised to read as follows:

§ 154.401 RD&D expenditures.

(a) All natural gas companies must include in their tariffs a non-discountable volumetric surcharge, as determined by the Commission upon approval of an application filed under paragraph (b)(1) of this section, to fund Research, Development, and Demonstration (RD&D) programs.

(b) *Applications for rate treatment approval.* (1) An application for advance approval of an RD&D program to be funded by the rates of natural gas pipeline companies may be filed by the Gas Research Institute or other RD&D organization. Approval by the Commission of such an RD&D application will constitute approval of the individual company's rate surcharges to fund the RD&D programs of the Gas Research Institute or other RD&D organization. The rate surcharge required in paragraph (a) of this section will be limited to funding projects that produce broadly-dispersed benefits flowing predominantly to gas consumers that cannot be captured readily by industry sectors.

(2) An application filed under paragraph (b)(1) of this section for advance approval of an RD&D program to be funded by the rates of natural gas pipeline companies must include:

(i) a 5-year program plan that identifies "core" RD&D projects and "non-core" RD&D projects;

(ii) the anticipated costs for the "core" program and the "non-core" program broken down by individual project cost; and

(iii) the respective surcharges proposed to fund the "core" program and the "non-core" program. "Core" projects are defined as those projects that produce broadly-dispersed benefits flowing predominantly to gas consumers that readily cannot be captured by industry sectors. "Non-core" projects are defined as all other RD&D projects. Such an application must be filed at least 180 days prior to the commencement of the 5-year period of the plan.

* * * * *

[49] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[50] 18 CFR 380.4.

[51] *See* 18 CFR 380.4(a)(2)(ii).

[52] 5 U.S.C. 601–612.

[53] 5 U.S.C. 605(b).

Federal Energy Regulatory Commission

[Docket No. RM97–3–000]

Research, Development and Demonstration Funding

Issued: April 30, 1997.

SANTA, Commissioner, *concurring:*

I concur in today's notice of proposed rulemaking to amend the Commission's research development and demonstration (RD&D) regulations to propose a new funding mechanism for the Gas Research Institute (GRI). Historically, GRI has served both consumers and the natural gas industry well as the planning and management organization for the coordination of collaborative natural gas RD&D projects. Nonetheless, as was made clear at the Commission's March 21, 1997, public conference to explore the future funding of RD&D in the natural gas industry, the funding crisis that has plagued GRI for the past five years is unlikely to be resolved absent intervention by this Commission. Therefore, I support initiating this proceeding to provide a forum in which this issue might be resolved conclusively.

Still, it concerns me that in proposing a mandatory volumetric surcharge on all interstate natural gas pipeline throughput to fund GRI's "core" RD&D program, the Commission is sidestepping several threshold questions that should be answered before taking this unprecedented step. As noted in the background discussion in today's NOPR, both GRI and the Commission's order in Opinion No. 11, authorizing GRI to undertake its RD&D program, are a product of the era of wellhead price controls and comprehensive regulation of the natural gas industry. Over the ensuing two decades, the natural gas industry has been restructured fundamentally. There now is a competitive commodity market for natural gas, interstate pipelines have left the merchant function and now provide unbundled open access transportation, and there now is the prospect for even greater competition and customer choice with the unbundling of local distribution company services. In sum, both the market conditions and the regulatory environment that gave rise to the need for this Commission's support for ratepayer-funded collaborative RD&D through GRI are part of the industry's increasingly distant past.

In light of these fundamental changes, what is the policy rationale for continued Commission support of collaborative natural gas industry RD&D through the GRI surcharge on interstate pipeline transportation services? Furthermore, is this public policy rationale for Commission-supported collaborative RD&D so great as to justify converting GRI funding from the heretofore voluntary program into one which would mandate interstate pipeline participation notwithstanding the decision by an individual pipeline, or pipelines, not to be a member of GRI? In other words, before taking the unprecedented step of transforming the GRI surcharge into a nonbypassable "tax" on all interstate pipeline throughput, does the Commission need to re-establish the public interest basis for this program in view of today's natural gas market?

I also believe that in deliberating on the future funding of RD&D in the natural gas industry, the Commission should consider this issue in the context of trends in the broader energy markets. With the convergence of natural gas and electricity markets, it is appropriate to compare the natural gas and electric power industries' mechanisms for funding collaborative RD&D. In particular, how is the experience of the Electric Power Research Institute (EPRI), which never has enjoyed the benefit of a Commission-authorized surcharge, instructive in evaluating the prospects for collaborative natural gas RD&D in the future? What, if anything, makes natural gas so different as to justify a Commission mandate that ratepayers fund GRI's "core" program when no such mandate exists for a comparable EPRI program?

Finally, while it is reflected in the NOPR, I wish to emphasize the question concerning whether GRI's proposed "non-core" voluntary program should be authorized by the Commission. Given that this purportedly is a "voluntary" program, what useful purpose is served by Commission oversight? The NOPR recounts GRI's argument in favor of Commission oversight of the "non-core" program: "[T]he Commission's imprimatur as to the analysis of the benefits of Technology Management RD&D would assist state commissions in dealing with the passthrough of these costs by local distribution companies." [1] Does this rationale support a finding that it is in the public interest for the Commission to oversee the "non-core" program? In particular, do state commissions desire the Commission's "assistance" in dealing with the passthrough of "non-core" program costs? Also, given the nature of the activities that would be funded under the "non-core" program (i.e., "RD&D activities that produce less widely-dispersed benefits to more limited categories, such as individual consumers, groups of consumers, industries, or groups of companies within an industry"), [2] how likely is it that in overseeing the "non-core" program the Commission easily could make generalized findings that "non-core" RD&D projects would be appropriate for funding through a generally applicable charge stated in a pipeline's tariff?

In raising these questions, I do not wish to leave the impression that there is not a case to be made for collaborative RD&D in the natural gas industry. Also, I view it as a positive development that GRI is now focusing more intently on a "core" program that is intended to capture RD&D projects with widely dispersed consumer benefits. Still, given GRI's seemingly chronic funding crisis and the unprecedented nature of the Commission's proposed solution, these fundamental threshold questions about the future of collaborative RD&D in the natural gas industry and the appropriate role of this Commission in supporting such RD&D should be answered before the Commission proceeds. If not now, when will be the appropriate time for such questions?

While the Commission's March 21, 1997, technical conference touched on these questions, I do not believe that the record of that conference alone provides a sufficient basis for taking the steps proposed in today's NOPR. I sincerely hope that these questions contribute to a better developed record in this proceeding so that the Commission can make a fully informed decision when it issues a final rule.

Donald F. Santa, Jr.,

Commissioner.

[FR Doc. 97–11794 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–P

[1] *Supra*, note 43.

[2] *Supra, slip op.* at p. 17.

NATIONAL INSTITUTE FOR LITERACY

34 CFR Part 1100

[CFDA No. 84.257I]

Literacy Leader Fellowship Program

AGENCY: National Institute for Literacy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Director proposes to amend the regulations governing the Literacy Leader Fellowship Program. Under this program, the Director may award fellowships to individuals to enable them to engage in research, education, training, technical assistance, or other activities that advance the field of adult education or literacy. The proposed amended regulations are needed to improve the administration of the program and to establish new priorities under the program.

DATES: Comments must be received on or before June 6, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Meg Young, National Institute for Literacy, 800 Connecticut Avenue N.W., Suite 200, Washington DC 20006. Comments may also be sent through the Internet to myoung@nifl.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Meg Young, Telephone: 202/632–1515. E-mail: myoung@nifl.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Literacy Leader Fellowship Program is authorized under section 384(e) of the Adult Education Act (20 U.S.C. 1213c(e)), as amended. On July 11, 1995, the Director published interim

final regulations which governed awards under the program for Fiscal Years 1995 and 1996. For the reasons explained below, the Director now proposes to revise the regulations governing the fellowship program and to implement the program under the revised regulations in Fiscal Year 1997 and subsequent years.

Since the publication of the interim final regulations, the Institute has developed new areas of emphasis, and the Director believes that it is necessary to address these areas in the Literacy Leader Fellowship Program through the establishment of new priorities. Therefore, proposed § 1100.6 establishes four new priorities from which the Director may select in inviting applications for funding under the fellowship program.

In addition, the Director has determined that some changes in the regulations are necessary to expand the accessibility of, and to improve the overall administration of, the program. The Director therefore proposes to revise the regulations to (1) extend eligibility for fellowships to individuals other than U.S. citizens (proposed § 1100.2(b)(3)); (2) allow more than one individual to apply jointly for a fellowship (proposed § 1100.2(d)); (3) describe the types of projects that are ineligible for funding (proposed § 1100.3(b)) and those applications that will not be evaluated for funding (proposed § 1100.12) so that applicants will be better guided in drafting complete applications that propose eligible projects; (4) explain more clearly the manner in which the Director selects applications for funding (proposed § 1100.20); and (5) revise and expand the selection criteria to better assist the Director in selecting high-quality projects for funding (proposed § 1100.21).

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Director has assessed the potential costs and benefits of this regulatory action. The potential costs and benefits associated with the proposed regulations are those resulting from statutory requirements and those determined by the Director to be necessary for administering this program effectively and efficiently. To the extent there are burdens specifically associated with information collection requirements, they are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits of these proposed regulations, the Director has determined that the benefits of the proposed regulations justify the costs.

To assist the Institute in complying with the specific requirements of Executive Order 12866, the Director invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Director certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only individuals, the regulations would not have an impact on small entities. Individuals are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

As described below, proposed §§ 1100.11 and 1100.33 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the National Institute for Literacy has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review under that Act.

Collection of Information: Literacy Leader Fellowship Program: Application for Fellowship Funds (§ 1100.11)

Proposed § 1100.11 describes how an individual applies to the Director for fellowship funds. Individuals are required to submit an application that describes a plan for the activities to be conducted under the proposed project. Applicants must also submit four letters of recommendation and certain forms, assurances and certifications, including the certification required under 34 CFR 75.61.

The likely respondents to this collection of information are individuals who are either literacy workers or adult learners and who wish to conduct projects under the Institute's Literacy Leader Fellowship Program. The information submitted will be used to select applications for funding.

We estimate that approximately 100 individuals may apply for fellowship funds, and each application will take an average of 20 hours to prepare. Therefore, the total annual reporting and recordkeeping burden that will result from the collection of this information is 2,000 burden hours (100 individuals, multiplied by 1 application, multiplied by 20 burden hours for preparing each application).

Collection of Information: Literacy Leader Fellowship Program: Reports Required to be Submitted by Literacy Leader Fellows (§ 1100.33)

Proposed § 1100.33 requires fellows to submit reports regarding their projects. The respondents to the collections of information contained in § 1100.33 will be the individuals who have been awarded funds to conduct projects under the Literacy Leader Fellowship Program. We anticipate awarding four fellowships.

Proposed § 1100.33(a) requires a fellow to submit fellowship results to the Institute so that the results may then be disseminated to policymakers and the public. Because each fellowship project will be different, proposed § 1100.33(b) states that each fellowship agreement will specify the manner in which the fellow is required to report on results and how and to whom the results will be disseminated. Therefore, the reporting and recordkeeping burden that will result from this collection of information will vary by fellow. However, we estimate that preparing the report of fellowship results will take an average of 20 hours. Therefore, the total annual reporting and recordkeeping burden that will result from the collection of this information is 80 burden hours (4 fellows, multiplied by 1 report, multiplied by 20 burden hours for preparing each report).

Proposed § 1100.33(c) requires a fellow to submit a one page update report every three months to the Director. These reports are required to inform the Institute about the fellow's progress and whether the fellow has encountered any challenges. We estimate that each update report will take an average of 1 hour to prepare. Because the Director may award fellowships that range between three and 12 months in duration, the total reporting and recordkeeping burden that will result from this collection of information may vary by fellow. However, the maximum total annual reporting and recordkeeping burden that will result from the collection of this information (based upon 12-month fellowships) is 16 burden hours (4 fellows, multiplied by 4 update reports, multiplied by 1 burden hour for preparing each update report).

Proposed § 1100.33(d) requires a fellow to submit a final performance report to the Director and to the Chairperson of the Board of the National Institute for Literacy no later than 90

days after the completion of the fellowship. The purpose of this report is to provide information to the Institute about the activities conducted by the fellow, whether the objectives of the project have been achieved, and how the activities performed and results achieved may enhance literacy practice in the United States. We estimate that each final performance report will take an average of 10 hours to prepare. Therefore, the total annual reporting and recordkeeping burden that will result from the collection of this information is 40 burden hours (4 fellows, multiplied by 1 final performance report, multiplied by 10 burden hours for preparing each final performance report),

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the National Institute for Literacy. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Institute on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 200, 800 Connecticut Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the National Institute for Literacy in complying with the specific requirements of Executive Order 12866 and the Paperwork Reduction Act of 1995 and their overall requirement of reducing regulatory burden, the Director invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 1100

Adult education; Grant programs—education; Reporting and recordkeeping requirements.

Dated: May 2, 1997.

Sharyn M. Abbott,

Executive Officer, National Institute for Literacy.

(Catalog of Federal Domestic Assistance Number 84.257I, Literacy Leader Fellowship Program)

The Director proposes to amend Title 34 of the Code of Federal Regulations by revising Part 1100 to read as follows:

PART 1100—NATIONAL INSTITUTE FOR LITERACY: LITERACY LEADER FELLOWSHIP PROGRAM

Subpart A—General

Sec.

1100.1 What is the Literacy Leader Fellowship Program?
1100.2 Who is eligible for a fellowship?
1100.3 What types of projects may a fellow conduct under this program?
1100.4 What regulations apply?
1100.5 What definitions apply?
1100.6 What priorities may the Director establish?

Subpart B—How Does an Individual Apply for a Fellowship?

1100.10 What categories of fellowships does the Institute award?
1100.11 How does an individual apply for a fellowship?
1100.12 What applications are not evaluated for funding?

Subpart C—How Does the Director Award a Fellowship?

1100.20 How is a fellow selected?
1100.21 What selection criteria does the Director use to rate an applicant?
1100.22 How does the Director determine the amount of a fellowship?
1100.23 What payment methods may the Director use?
1100.24 What are the procedures for payment of a fellowship award directly to the fellow?
1100.25 What are the procedures for payment of a fellowship award through the fellow's employer?

Subpart D—What Conditions Must Be Met by a Fellow?

1100.30 Where may the fellowship project be conducted?
1100.31 Who is responsible for oversight of fellowship activities?
1100.32 What is the duration of a fellowship?
1100.33 What reports are required?

Authority: 20 U.S.C. 1213c(e).

Subpart A—General

§ 1100.1 What is the Literacy Leader Fellowship Program?

(a) Under the Literacy Leader Fellowship Program, the Director of the National Institute for Literacy provides financial assistance to outstanding individuals who are pursuing careers in adult education or literacy.

(b) Fellowships are awarded to these individuals for the purpose of carrying out short-term, innovative projects that contribute to the knowledge base of the adult education or literacy field.

(c) Fellowships are intended to benefit the fellow, the Institute, and the national literacy field by providing the fellow with the opportunity to interact with national leaders in the field and make contributions to federal policy initiatives that promote a fully literate adult population.

§ 1100.2 Who is eligible for a fellowship?

(a) Only individuals are eligible to be recipients of fellowships.

(b) To be eligible for a fellowship under this program, an individual must be—

(1) A citizen or national of the United States, or a permanent resident of the United States, or an individual who is in the United States for other than temporary purposes and intends to become a permanent resident;

(2) Eligible for Federal assistance under the terms of 34 CFR 75.60 and 75.61; and

(3) Either a literacy worker or an adult learner.

(c) An individual who has received a fellowship award in a prior year is not eligible for another award.

(d) Multiple individuals may apply jointly for one award, if each individual will contribute significantly to the proposed project and if the proposed project will develop leadership for each individual.

§ 1100.3 What type of project may a fellow conduct under this program?

(a) Under the auspices of the Institute, and in accordance with the Fellowship Agreement, a Literacy Leader Fellow may use a fellowship awarded under this part to engage in research, education, training, technical assistance, or other activities that advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

(b) A Literacy Leader Fellow may not use a fellowship awarded under this part for any of the following:

(1) Tuition and fees for continuing the education of the applicant where this is the sole or primary purpose of the project.

(2) Planning and implementing fundraisers.

(3) General program operations and administration.

(4) Activities that otherwise do not meet the purposes of the Literacy Leader Fellowship program, as described in paragraph (a) of this section.

§ 1100.4 What regulations apply?

This program is governed by the regulations in this part and the following additional regulations:

34 CFR 74.36, Intangible property;

34 CFR 75.60, Individuals ineligible to receive assistance;

34 CFR 75.61, Certification of eligibility; effect of eligibility; and

34 CFR part 85, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

§ 1100.5 What definitions apply?

(a) The definitions in 34 CFR 77.1 except that the definitions of "Applicant", "Application", "Award", and "Project" do not apply to this part.

(b) Other definitions. The following definitions also apply to this part:

Adult learner means an individual over 16 years old who is pursuing or has completed some form of literacy or basic skills training, including preparation for the G.E.D.

Applicant means an individual (or more than one individual, if applying jointly) requesting a fellowship under this program.

Application means a written request for a fellowship under this program.

Award means an amount of funds provided for fellowship activities.

Board means the National Institute for Literacy's advisory board established pursuant to section 384(f) of the Adult Education Act (20 U.S.C. 1213c(f).)

Director means the Director of the National Institute for Literacy.

Fellow means a recipient of a fellowship.

Fellowship means an award of financial assistance made by the Institute to an individual pursuant to section 384(e) of the Adult Education Act (20 U.S.C. 1213c(e)) to enable that individual to conduct research or other authorized literacy activities under the auspices of the Institute.

Fellowship Agreement means a written agreement entered into between the Institute and a fellow, which, when executed, has the legal effect of obligating the fellowship award, and which states the rights and obligations of the parties.

Institute means the National Institute for Literacy.

Literacy worker means an individual who is pursuing a career in literacy or adult education or a related field and who either has a minimum of five years of relevant academic, volunteer or professional experience in the literacy, adult education, or related field, or has made a significant contribution to, or notable progress in, the field. Relevant experience includes teaching, policymaking, administration, or research.

Project means the work to be engaged in by the fellow during the period of the fellowship.

Research means one or more of the following activities in literacy or education or education related fields: basic and applied research, planning, surveys, assessments, evaluations, investigations, experiments, development and demonstrations.

§ 1100.6 What priorities may the Director establish?

The Director may, through a notice published in the **Federal Register**, select annually one or more priorities for funding. These priorities may be chosen from the areas of greatest immediate concern to the Institute and may include, but are not limited to, the following areas:

(a) *Developing Leadership in Adult Learners.* Because adult learners are the true experts on literacy, they are an important resource for the field. Their firsthand experience as "customers" of the literacy system can be invaluable in assisting the field in moving forward, particularly in terms of raising public awareness and understanding about literacy.

(b) *Expanding the Use of Technology in Literacy Programs.* One of the Institute's major projects is the Literacy Information and Communication System (LINCS), an Internet-based information system that provides timely information and abundant resources to the literacy community. Keeping the literacy community up to date in the Information Age is vital.

(c) *Improving Accountability for Literacy Programs.* Literacy programs must develop accountability systems that demonstrate their effectiveness in helping adult learners contribute more fully in the workplace, family and community. There is growing interest in results-oriented literacy practice, especially as related to the Equipped for the Future (EFF) framework.

(d) *Raising Public Awareness about Literacy.* The Institute is leading a national effort to raise public awareness that literacy is part of the solution to many social concerns, including health, welfare, the economy, and the well-being of children. Projects that enhance this effort will be given priority consideration.

Subpart B—How Does an Individual Apply for a Fellowship?

§ 1100.10 What categories of fellowships does the Institute award?

The Institute awards two categories of Literacy Leadership Fellowships:

(a) Literacy Worker Fellowships; and

(b) Adult Learner Fellowships.

§ 1100.11 How does an individual apply for a fellowship?

An individual shall apply to the Director for a fellowship award in response to an application notice published by the Director in the **Federal Register**. The application must describe a plan for one or more of the activities stated in § 1100.3 that the applicant proposes to conduct under the fellowship. The application must indicate which category of fellowship, as described in § 1100.10(b), most accurately describes the applicant. Applicants must also submit four letters of recommendation and certain forms, assurances and certifications, including the certification required under 34 CFR 75.61.

§ 1100.12 What applications are not evaluated for funding?

The Director does not evaluate an application if—

(a) The applicant is not eligible under § 1100.2;

(b) The applicant does not comply with all of the procedural rules that govern the submission of applications for Literacy Leader Fellowship funds;

(c) The application does not contain the information required by the Institute;

(d) The application proposes a project for which a fellow may not use fellowship funds, as described in § 1100.3(b).

(e) The application is not submitted by the deadline stated in the application notice.

Subpart C—How Does the Director Award a Fellowship?

§ 1100.20 How is a fellow selected?

(a) The Director selects applications for fellowships on the basis of the selection criteria in § 1100.21 and any priorities that have been published in the **Federal Register** and are applicable to the selection of applications.

(b)(1) The Director may use experts from the literacy field to evaluate the applications.

(2) The Director prepares a rank order of the applications based solely on the evaluation of their quality according to the selection criteria, selects a number of the top-ranked applications, and

provides it to the Institute's Advisory Board."

(3) The Institute's Advisory Board evaluates the applications provided by the Director based on the selection criteria in § 1100.21 and makes recommendations to the Director regarding applications to be selected for fellowships.

(4) The Director then determines the number of awards to be made in each fellowship category and the order in which applications will be selected for fellowships. The Director considers the following in making these determinations:

(i) The information in each application.

(ii) The rank ordering of the applications under paragraph (b)(2) of this section.

(iii) The recommendations made by the Institute's Advisory Board under paragraph (b)(3) of this section.

(iv) Any other information relevant to any of the selection criteria, applicable priorities, or the purposes of the Literacy Leader Fellowship Program, including whether the selection of an application would increase the diversity of fellowship projects under this program.

§ 1100.21 What selection criteria does the Director use to rate an applicant?

The Director uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of Plan.* (45 points) The Director uses the following criteria to evaluate the quality of the proposed project:

(1) The proposed project deals with an issue of major concern to the literacy field.

(2) The design of the project is strong and feasible.

(3) The project addresses critical issues in an innovative way.

(4) The plan demonstrates a knowledge of similar programs and an intention, where appropriate, to coordinate with them.

(5) The applicant describes adequate support and resources for the project.

(6) The plan includes evaluation methods to determine the effectiveness of the project.

(7) The project results are likely to contribute to the knowledge base in literacy or adult education, and to federal policy intiiatives in these or related areas.

(8) The project will enhance literacy or adult education practice.

(9) The project builds research capacity or improves practice within the field.

(b) *Qualifications of Applicant.* (25 points) The Director uses the following criteria to evaluate the qualification of the applicant:

(1) The applicant has a strong background in the literacy field. [Include all relevant experience, which many include experiences as a volunteer or an adult learner.]

(2) The applicant has expertise in the proposed area of the project.

(3) The applicant has demonstrated the ability to complete a quality project or has shown leadership in this area.

(4) The applicant provides letters of recommendation that show strong knowledge by others in the literacy field of the applicant's background and past work.

(c) *Relevance to the Institute.* (10 points) The Director uses the following criteria to evaluate the relevance of the applicant's proposal to the the Institute:

(1) The project significantly relates to the purposes and work of the Institute.

(2) The applicant proposes to spend a significant portion of the project time at the Institute.

(d) *Dissemination Plan.* (10 points) The Director uses the following criteria to evaluate the quality of the dissemination plan:

(1) The applicant clearly specifies what information will be made available to the field and how this information will further the efforts of the field.

(2) The applicant describes how this information will be shared with the field (e.g., print, on-line, presentations, video, etc.).

(e) *Budget.* (10 points) The Director uses the following criteria to evaluate the budget:

(1) The budget will adequately support the project.

(2) The costs are clearly related to the objectives of the project.

(3) The budget is cost effective.

(4) The budget narrative clearly describes the budget and how costs are calculated.

§ 1100.22 How does the Director determine the amount of a fellowship?

The amount of a fellowship includes—

(a) A stipend, based on—

(1) The fellow's current annual salary, prorated for the length of the fellowship not to exceed $30,000 salary reimbursement; or

(2) If a fellow has no current salary, the fellow's education and experience; and

(b) A subsistence allowance, materials allowance (covering costs of materials and supplies directly related to the completion of the project), and travel expenses (including expenses to attend quarterly meetings in Washington, DC) related to the fellowship and necessary to complete the scope of work outlined in the proposal, consistent with Title 5 U.S.C. chapter 57.

§ 1100.23 What payment methods may the Director use?

(a) The Director will pay a fellowship award directly to the fellow or through the fellow's employer. The application should specify if the fellow wishes to be paid directly or through the fellow's employer.

(b) The Director considers the preferences of the fellow in determining whether to pay a fellowship award directly to the fellow or through the fellow's employer; however, the Director pays a fellowship award through the fellow's employer only if the employer enters into an agreement with the Director to comply with the provisions of § 1100.25.

§ 1100.24 What are the procedures for payment of a fellowship award directly to the fellow?

(a) If the Director pays a fellowship award directly to the fellow after the Director determines the amount of a fellowship award, the fellowship recipient shall submit a payment schedule to the Director for approval. The Director advises the recipient of the approved schedule.

(b) If a fellow does not complete the fellowship, or if the Institute terminates the fellowship, the fellow shall return to the Director a prorated portion of the stipend and any unused subsistence and materials allowance and travel funds at the time and in the manner required by the Director.

§ 1100.25 What are the procedures for payment of a fellowship award through the fellow's employer?

(a) If the Director pays a fellowship award through the fellow's employer, the employer shall submit a payment schedule to the Director for approval.

(b) The employer shall pay the fellow the stipend, subsistence and materials allowance, and travel funds according to the payment schedule approved by the Director. If the fellow does not complete the fellowship, the fellow shall return to the employer a prorated portion of the stipend and any unused subsistence and material allowance and travel funds. The employer shall return the funds to the Director at the time and in the manner required by the Director. The employer shall also return to the Director any portion of the stipend, subsistence and materials allowance and travel funds not yet paid by the employer to the fellow.

Subpart D—What Conditions Must be Met by a Fellow?

§ 1100.30 Where may the fellowship project be conducted?

(a) A fellow carries out all, or a portion of, the fellowship project at the National Institute for Literacy in Washington, DC. If the Director determines that unusual circumstances exist, the Director may authorize the fellow to carry out all of the project elsewhere.

(b) Office space and logistics will be provided by the Institute.

(c) The fellow may also be required to participate in meetings, conferences and other activities at the Departments of Education, Labor, or Health and Human and Services, in Washington, DC, or in site visits to other locations, if deemed appropriate for the project being conducted.

§ 1100.31 Who is responsible for oversight of fellowship activities?

(a) All fellowship activities are conducted under the direct or general oversight of the Institute. The Institute may arrange through written agreement for another Federal agency, or another public or private nonprofit agency or organization that is substantially involved in literacy research or services, to assume direct supervision of the fellowship activities.

(b) Fellows may be assigned a peer mentor to orient them to the Federal system and Institute procedures.

§ 1100.32 What is the duration of a fellowship?

(a) The Institute awards fellowships for a period of at least three and not more than 12 months of full-time or part-time activity. An award may not exceed 12 months in duration. The actual period of the fellowship will be determined at the time of award based on proposed activities.

(b) In order to continue the fellowship to completion, the fellow must be making satisfactory progress as determined periodically by the Director.

§ 1100.33 What reports are required?

(a) A fellow shall submit fellowship results to the Institute in formats suitable for wide dissemination to policymakers and the public. These formats should include, as appropriate to the topic of the fellowship and the intended audience, articles for academic journals, newspapers, and magazines.

(b) Each fellowship agreement will contain specific provisions for how, when, and in what format the fellow will report on results, and how to whom the results will be disseminated.

(c) A fellow shall submit a semi-annual report to the Director.

(d) A fellow shall submit a final performance report to the Director no later than 90 days after the completion of the fellowship. The report must contain a description of the activities conducted by the fellow and a thorough analysis of the extent to which, in the opinion of the fellow, the objectives of the project have been achieved. In addition, the report must include a detailed discussion of how the activities performed and results achieved could be used to enhance literacy practice of the United States.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 970410086–7086–01]

RIN 0651–AA92

Revision of Patent and Trademark Fees for Fiscal Year 1998

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) is proposing to amend the rules of practice in patent and trademark cases, Parts 1 and 2 of title 37, Code of Federal Regulations, to adjust certain patent fee and trademark service fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation.

DATES: Written comments must be submitted on or before June 11, 1997.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Matthew Lee, Crystal Park 1, Suite 802, or by fax to (703) 305–8007.

Written comments will be available for public inspection in Crystal Park 1, Suite 802, located at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by telephone at (703) 305–8051, fax at (703) 305–8007, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Office of Finance, Crystal Park 1, Suite 802, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed to adjust PTO fees in accordance with the applicable provisions of title 35, United States Code; section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113); and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (as amended by section 8001 of Public Law 103–66), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Public Law 102–204).

In a notice of proposed rulemaking entitled "Changes to Implement 18-Month Publication of Patent Applications," published in the **Federal Register** at 60 FR 42352 (August 15, 1995), and in the *Official Gazette of the Patent and Trademark Office* at 1177 *Off. Gaz. Pat. Office* 61 (August 15, 1995), the PTO proposed to increase the filing, issue, and each maintenance fee by $30 to recover the cost of 18-month publication of patent applications. In the event that legislation providing for the 18-month publication of patent applications is enacted, the PTO may further increase the filing, issue, and each maintenance fee to recover the cost of 18-month publication of patent applications in the final rulemaking to implement such legislation.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41 (a) and (b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous twelve months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (amended by section 8001 of Public Law 103–66) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41 (a) and (b) to collect $119 million in fiscal year 1998.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to

set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the CPI.

Section 31 also allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Recovery Level Determinations

This proposed rule adjusts patent fees for a planned recovery of $763,391,000 in fiscal year 1998, as proposed in the Administration's budget request to the Congress.

The patent statutory fees established by 35 U.S.C. 41 (a) and (b) are proposed to be adjusted on October 1, 1997, to reflect any fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the PTO should use CPI–U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI–U until approximately twenty-one days after the end of the month being calculated. Therefore, the latest CPI–U information available is for the month of February 1997. In accordance with previous rulemaking methodology, the PTO uses the Administration's projected CPI–U for the twelve-month period ending September 30, 1997, which is 2.6 percent. Based on this projection, patent statutory fees are proposed to be adjusted by 2.6 percent. Before the final fee schedule is published, the fees may be adjusted slightly based on updated data available from the Department of Labor.

Certain non-statutory patent processing fees established under 35 U.S.C. 41(d) and PCT processing fees established under 35 U.S.C. 376 are proposed to be adjusted to recover their estimated average costs in fiscal year 1998.

Three patent service fees that are set by statute will not be adjusted. The three fees that are not being adjusted are assignment recording fees, printed patent copy fees and photocopy charge fees.

Certain trademark service fees established under 15 U.S.C. 1113 are proposed to be adjusted to recover their estimated average costs in fiscal year 1998.

The proposed fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that any comparable small entity fee would be a whole number.

Workload Projections

Determination of workload varies by fee. Principal workload projection techniques are as follows:

Patent application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 78 percent, 54 percent and 32 percent, respectively. Service fee workloads follow linear trends from prior years' activities.

General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee increase would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under Section 1.8 is not proper for items which are specifically excluded from the provisions of Section 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing or Transmission is not proper. Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees using the "Express Mail" service of the United States Postal Service (USPS) do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a date of deposit with the USPS (shown by the "date in" on the "Express Mail" mailing label) which is dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

In order to ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (a), (e) through (g), (m), (r) and (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j) and (n) through (p), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.19 Document Supply Fees

Section 1.19, paragraphs (a)(2) and (a)(3), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (c), (i), and (j), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, paragraphs (a)(1)(ii), (a)(6) and (j), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, paragraph (a), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs and reflect current business practices.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b) and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 2.6 Trademark Fees

Section 2.6, paragraphs (b)(4) and (b)(10), if revised as proposed, would adjust fees established therein to recover costs.

Other Considerations

This proposed rulemaking contains no information collection within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. This proposed rule has been determined to be not significant for purposes of Executive Order 12866. The PTO has determined that this proposed rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The proposed rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a fifty percent reduction in the major patent fees.

A comparison of existing and proposed fee amounts is included as an Appendix to this notice of proposed rulemaking.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is proposing to amend title 37 of the Code of Federal Regulations, parts 1 and 2, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.9(f))....$395.00
By other than a small entity....$790.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))....$41.00
By other than a small entity....$82.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))....$135.00
By other than a small entity....$270.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.9(f))....$165.00
By other than a small entity....$330.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.9(f))....$270.00
By other than a small entity....$540.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f))....$395.00
By other than a small entity....$790.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f))....$41.00
By other than a small entity....$82.00

* * * * *

3. Section 1.17 is proposed to be amended by revising paragraphs (a), (e) through (g), (j), (m) through (p), (r), and (s) to read as follows:

§ 1.17 Patent application processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.9(f))....$200.00
By other than a small entity....$400.00

(3) For reply within third month:

By a small entity (§ 1.9(f))....$475.00
By other than a small entity....$950.00

(4) For reply within fourth month:

By a small entity (§ 1.9(f))....$755.00
By other than a small entity....$1,510.00

(5) For reply within fifth month:

By a small entity (§ 1.9(f))....$1,030.00
By other than a small entity....$2,060.00

* * * * *

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f))....$155.00
By other than a small entity....$310.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9 (f))....$155.00
By other than a small entity....$310.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f))....$135.00
By other than a small entity....$270.00

* * * * *

(j) For filing a petition to institute a public use proceeding under § 1.292....$1,510.00

* * * * *

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:

By a small entity (§ 1.9(f))....$660.00
By other than a small entity....$1,320.00

(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$920.00 reduced by the amount of the application basic filing fee paid.

(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,840.00 reduced by the amount of the application basic filing fee paid.

(p) For submission of an information disclosure statement under § 1.97(c)....$240.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.9(f))....$395.00
By other than a small entity....$790.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.9(f))....$395.00
By other than a small entity....$790.00

4. Section 1.18 is proposed to be revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f))....$660.00

By other than a small entity $1,320.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f)).....$225.00
By other than a small entity $450.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)).....$335.00
By other than a small entity $670.00

5. Section 1.19 is proposed to be amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 1.19 Document supply fees.

(a) * * *

(2) Printed copy of a plant patent in color $15.00
(3) Copy of a utility patent or statutory invention registration containing color drawing (see § 1.84(a)(2)).....$25.00

* * * * *

6. Section 1.20 is proposed to be amended by revising paragraphs (c), (e) through (g), (i)(1), (i)(2), and (j)(1) through (j)(3) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) For filing a request for reexamination (§ 1.510(a)).....$2,520.00

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f)).....$525.00
By other than a small entity $1,050.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$1,050.00
By other than a small entity $2,100.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$1,580.00
By other than a small entity $3,160.00

* * * * *

(i) * * *

(1) unavoidable $700.00
(2) unintentional $1,640.00

(j) * * *

(1) Application for extension under § 1.740 .....$1,120.00
(2) Initial application for interim extension under § 1.790 .....$420.00
(3) Subsequent application for interim extension under § 1.790 .....$220.00

7. Section 1.21 is proposed to be amended by revising paragraphs (a)(1)(ii), (a)(6) and (j) to read as follows:

§ 1.21 Miscellaneous fees and charges.

(a) * * *

(1) * * *

(ii) Registration examination fee $310.00

* * * * *

(6) For requesting regrading of an examination under § 10.7(c):

(i) Regrading of morning section (PTO Practice and Procedure) $230.00
(ii) Regrading of afternoon section (Claim Drafting) $540.00

* * * * *

(j) Labor charges for services, per hour or fraction thereof $40.00

* * * * *

8. Section 1.445 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) $240.00
(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) Where a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under 37 CFR 1.16(a) has been filed $450.00
(ii) For all situations not provided for in (a)(2)(i) of this section $700.00
(3) A supplemental search fee when required, per additional invention $210.00

* * * * *

9. Section 1.482 is proposed to be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(1) * * *

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of $490.00
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of $750.00

(2) * * *

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office.....$270.00

* * * * *

10. Section 1.492 is proposed to be amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$360.00
By other than a small entity $720.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f)).....$395.00
By other than a small entity $790.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$535.00
By other than a small entity $1,070.00

(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.9(f)).....$49.00
By other than a small entity $98.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f)).....$465.00
By other than a small entity $930.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....$41.00
By other than a small entity $82.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....$135.00
By other than a small entity $270.00

* * * * *

Part 2—Rules of Practice in Trademark Cases

1. The authority citation for 37 CFR Part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (b)(4) and (b)(10) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) Trademark service fees. * * *

(4) Certified copy of a registered mark, showing title and/or status:

(i) Regular service $15.00
(ii) Expedited local service $30.00

* * * * *

(10) Labor charges for services, per hour or fraction thereof $40.00

* * * * *

Dated: May 1, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Note: The following appendix is provided as a courtesy to the public, but is not a substitute for the rules. It will not appear in the code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Sec.	Description	Pre-Oct 1997	Oct 1997
1.16(a)	Basic Filing Fee	$770	$790
1.16(a)	Basic Filing Fee (Small Entity)	385	395
1.16(b)	Independent Claims	80	82
1.16(b)	Independent Claims (Small Entity)	40	41
1.16(c)	Claims in Excess of 20	22	—
1.16(c)	Claims in Excess of 20 (Small Entity)	11	—
1.16(d)	Multiple Dependent Claims	260	270
1.16(d)	Multiple Dependent Claims (Small Entity)	130	135
1.16(e)	Surcharge—Late Filing Fee	130	—
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	—
1.16(f)	Design Filing Fee	320	330
1.16(f)	Design Filing Fee (Small Entity)	160	165
1.16(g)	Plant Filing Fee	530	540
1.16(g)	Plant Filing Fee (Small Entity)	265	270
1.16(h)	Reissue Filing Fee	770	790
1.16(h)	Reissue Filing Fee (Small Entity)	385	395
1.16(i)	Reissue Independent Claims	80	82
1.16(i)	Reissue Independent Claims (Small Entity)	40	41
1.16(j)	Reissue Claims in Excess of 20	22	—
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	—
1.16(k)	Provisional Application Filing Fee	150	—
1.16(k)	Provisional Application Filing Fee (Small Entity)	75	—
1.16(l)	Surcharge—Incomplete Provisional App. Filed	50	—
1.16(l)	Surcharge—Incomplete Provisional App. Filed (Small Entity)	25	—
1.17(a)(1)	Extension—First Month	110	—
1.17(a)(1)	Extension—First Month (Small Entity)	55	—
1.17(a)(2)	Extension—Second Month	390	400
1.17(a)(2)	Extension—Second Month (Small Entity)	195	200
1.17(a)(3)	Extension—Third Month	930	950
1.17(a)(3)	Extension—Third Month (Small Entity)	465	475
1.17(a)(4)	Extension—Fourth Month	1,470	1,510
1.17(a)(4)	Extension—Fourth Month (Small Entity)	735	755
1.17(a)(5)	Extension—Fifth Month	—	2,060
1.17(a)(5)	Extension—Fifth Month (Small Entity)	—	1,030
1.17(e)	Notice of Appeal	300	310
1.17(e)	Notice of Appeal (Small Entity)	150	155
1.17(f)	Filing a Brief	300	310
1.17(f)	Filing a Brief (Small Entity)	150	155
1.17(g)	Request for Oral Hearing	260	270
1.17(g)	Request for Oral Hearing (Small Entity)	130	135
1.17(h)	Petition—Not All Inventors	130	—
1.17(h)	Petition—Correction of Inventorship	130	—
1.17(h)	Petition—Decision on Questions	130	—
1.17(h)	Petition—Suspend Rules	130	—
1.17(h)	Petition—Expedited License	130	—
1.17(h)	Petition—Scope of License	130	—
1.17(h)	Petition—Retroactive License	130	—
1.17(h)	Petition—Refusing Maintenance Fee	130	—
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	—
1.17(h)	Petition—Interference	130	—
1.17(h)	Petition—Reconsider Interference	130	—
1.17(h)	Petition—Late Filing of Interference	130	—
1.20(b)	Petition—Correction of Inventorship	130	—
1.17(h)	Petition—Refusal to Publish SIR	130	—
1.17(i)	Petition—For Assignment	130	—
1.17(i)	Petition—For Application	130	—
1.17(i)	Petition—Late Priority Papers	130	—
1.17(i)	Petition—Suspend Action	130	—

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1997	Oct 1997
1.17(i)	Petition—Divisional Reissues to Issue Separately	130	—
1.17(i)	Petition—For Interference Agreement	130	—
1.17(i)	Petition—Amendment After Issue	130	—
1.17(i)	Petition—Withdrawal After Issue	130	—
1.17(i)	Petition—Defer Issue	130	—
1.17(i)	Petition—Issue to Assignee	130	—
1.17(i)	Petition—Accord a Filing Date Under § 1.53	130	—
1.17(i)	Petition—Accord a Filing Date Under § 1.62	130	—
1.17(i)	Petition—Make Application Special	130	—
1.17(j)	Petition—Public Use Proceeding	1,470	1,510
1.17(k)	Non-English Specification	130	—
1.17(l)	Petition—Revive Abandoned Appl	110	—
1.17(l)	Petition—Revive Abandoned Appl. (Small Entity)	55	—
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	1,290	1,320
1.17(m)	Petition—Revive Unintent Abandoned Appl. (Small Entity)	645	660
1.17(n)	SIR—Prior to Examiner's Action	900	920
1.17(o)	SIR—After Examiner's Action	1,790	1,840
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	230	240
1.17(q)	Petition—Correction of Inventorship (Prov. App.)	50	—
1.17(q)	Petition—Accord a filing date (Prov. App.)	50	—
1.17(q)	Petition—Entry of submission after final rejection (Prov. App.)	50	—
1.17(r)	Filing a submission after final rejection (1.129(a))	770	790
1.17(r)	Filing a submission after final rejection (1.129(a)) (Small Entity)	385	395
1.17(s)	Per add'l invention to be examined (1.129(b))	770	790
1.17(s)	Per add'l invention to be examined (1.129(b)) (Small Entity)	385	395
1.18(a)	Issue Fee	1,290	1,320
1.18(a)	Issue Fee (Small Entity)	645	660
1.18(b)	Design Issue Fee	440	450
1.18(b)	Design Issue Fee (Small Entity)	220	225
1.18(c)	Plant Issue Fee	650	670
1.18(c)	Plant Issue Fee (Small Entity)	325	335
1.19(a)(1)(i)	Copy of Patent	3	—
1.19(a)(1)(ii)	Patent Copy—Overnight delivery to PTO Box or overnight fax	6	—
1.19(a)(1)(iii)	Patent Copy Ordered by Expedited Mail or Fax—Exp. service	25	—
1.19(a)(2)	Plant Patent Copy	12	15
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	25
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	15	—
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	30	—
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	—
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	—
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	25	—
1.19(c)	Library Service	50	—
1.19(d)	List of Patents in Subclass	3	—
1.19(e)	Uncertified Statement-Status of Maintenance Fee Payment	10	—
1.19(f)	Copy of Non-U.S. Patent Document	25	—
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	—
1.19(h)	Duplicate or Corrected Filing Receipt	25	—
1.20(a)	Certificate of Correction	100	—
1.20(c)	Reexamination	2,460	2,520
1.20(d)	Statutory Disclaimer	110	—
1.20(d)	Statutory Disclaimer (Small Entity)	55	—
1.20(e)	Maintenance Fee—3.5 Years	1,020	1,050
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	510	525
1.20(f)	Maintenance Fee—7.5 Years	2,050	2,100
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	1,025	1,050
1.20(g)	Maintenance Fee—11.5 Years	3,080	3,160
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,540	1,580
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	—
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	—
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	680	700
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,600	1,640
1.20(j)(1)	Extension of Term of Patent Under 1.740	1,090	1,120
1.20(j)(2)	Initial Application for Interim Extension Under 1.790	410	420
1.20(j)(3)	Subsequent Application for Interim Extension Under 1.790	210	220
1.21(a)(1)(i)	Application Fee (non-refundable)	40	—
1.21(a)(1)(ii)	Registration examination fee	300	310
1.21(a)(2)	Registration to Practice	100	—
1.21(a)(3)	Reinstatement to Practice	40	—
1.21(a)(4)	Certificate of Good Standing	10	—
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	—
1.21(a)(5)	Review of Decision of Director, OED	130	—

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1997	Oct 1997
1.21(a)(6)(i)	Regrading of A.M. section (PTO Practice and Procedure)	225	230
1.21(a)(6)(ii)	Regrading of P.M. section (Claim Drafting)	530	540
1.21(b)(1)	Establish Deposit Account	10	—
1.21(b)(2)	Service Charge Below Minimum Balance	25	—
1.21(b)(3)	Service Charge Below Minimum Balance	25	—
1.21(c)	Filing a Disclosure Document	10	—
1.21(d)	Box Rental	50	—
1.21(e)	International Type Search Report	40	—
1.21(g)	Self-Service Copy Change	25	—
1.21(h)	Recording Patent Property	40	—
1.21(i)	Publication in the OG	25	—
1.21(j)	Labor Charges for Services	30	40
1.21(k)	Unspecified Other Services	1	—
1.21(k)	Terminal Use APS-CSIR (per hour)	50	—
1.21(l)	Retaining Abandoned Application	130	—
1.21(m)	Processing Returned Checks	50	—
1.21(n)	Handling Fee—Incomplete Application	130	—
1.21(o)	Terminal Use APS—TEXT	40	—
1.24	Coupons for Patent and Trademark Copies	3	—
1.296	Handling Fee—Withdrawal SIR	130	—
1.445(a)(1)	Transmittal Fee	230	240
1.445(a)(2)(i)	PCT Search Fee—Prior U.S. Application	440	450
1.445(a)(2)(ii)	PCT Search Fee—No U.S. Application	680	700
1.445(a)(3)	Supplemental Search	200	210
1.482(a)(1)(i)	Preliminary Exam Fee	480	490
1.482(a)(1)(ii)	Preliminary Exam Fee	730	750
1.482(a)(2)(i)	Additional Invention	140	—
1.482(a)(2)(ii)	Additional Invention	260	270
1.492(a)(1)	Preliminary Examining Authority	700	720
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	350	360
1.492(a)(2)	Searching Authority	770	790
1.492(a)(2)	Searching Authority (Small Entity)	385	395
1.492(a)(3)	PTO Not ISA nor IPEA	1,040	1,070
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	520	535
1.492(a)(4)	Claims—IPEA	96	98
1.492(a)(4)	Claims—IPEA (Small Entity)	48	49
1.492(a)(5)	Filing with EPO/JPO Search Report	910	930
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	455	465
1.492(b)	Claims—Extra Individual (Over 3)	80	82
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	40	41
1.492(c)	Claims—Extra Total (Over 20)	22	—
1.492(c)	(Claims—Extra Total (Over 20) (Small Entity)	11	—
1.492(d)	Claims—Multiple Dependents	260	270
1.492(d)	Claims—Multiple Dependents (Small Entity)	130	135
1.492(e)	Surcharge	130	—
1.492(e)	Surcharge (Small Entity)	65	—
1.492(f)	English Translation—After 20 Months	130	—
2.6(a)(1)	Application for Registration, Per Class	245	—
2.6(a)(2)	Amendment to Allege Use, Per Class	100	—
2.6(a)(3)	Statement of Use, Per Class	100	—
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	—
2.6(a)(5)	Application for Renewal, Per Class	300	—
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	—
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	—
2.6(a)(8)	Issuing New Certificate of Registration	100	—
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	—
2.6(a)(10)	Filing Disclaimer to Registration	100	—
2.6(a)(11)	Filing Amendment to Registration	100	—
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	—
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	—
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	200	—
2.6(a)(15)	Petitions to the Commissioner	100	—
2.6(a)(16)	Petition to Cancel, Per Class	200	—
2.6(a)(17)	Notice of Opposition, Per Class	200	—
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	—
2.6(a)(19)	Dividing an Application, Per New Application Created	100	—
2.6(b)(1)(i)	Copy of Registered Mark	3	—
2.6(b)(1)(ii)	Copy of Registered Mark, overnight delivery to PTO box or fax	6	—
2.6(b)(1)(iii)	Copy of Reg. Mark Ordered Via Exp. Mail or Fax, Exp. Svc	25	—
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	15	—
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	30	—

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Pre-Oct 1997	Oct 1997
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	—
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	15
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	30
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	—
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	—
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	—
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	25	—
2.6(b)(8)	Terminal Use X-SEARCH	40	—
2.6(b)(9)	Self-Service Copy Charge	0.25	—
2.6(b)(10)	Labor Charges for Services	30	40
2.6(b)(11)	Unspecified Other Services	(1)	—

— These fees are not affected by this rulemaking. [1] Actual cost.

[FR Doc. 97–11822 Filed 5–6–97; 8:45 am]
BILLING CODE 3510–16–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH73

Loan Guaranty: Electronic Payment of Funding Fee

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: This document proposes to amend the VA loan guaranty regulations to require that all funding fees (including late fees and interest) for VA-guaranteed loans be paid electronically through the Automated Clearing House (ACH) program. The adoption of the ACH program would eliminate lost mail and eliminate data errors resulting from manual recording. Further accounting reconciliation would be reduced. In addition, banking costs would be reduced. This document also corrects a typographical error in the "Allowable fees and charges; manufactured home unit" section.

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154. Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH73." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: This document proposes to amend the VA loan guaranty regulations to require that all funding fees (including late fees and interest) for VA-guaranteed loans be paid electronically through the Automated Clearing House (ACH) program. The amounts are paid by the veteran to VA through the mortgage lender. Since 1988, VA has allowed lenders to use the ACH program on a voluntary basis, and approximately one-half of VA's funding fees (including late fees and interest) are paid through the ACH program. When the ACH program is not used, the mortgage lender sends the amount due through the mail to VA by check. The ACH program uses electronic transfer instead of the mail.

There are three methods for paying the VA funding fee (including late fees and interest) through the ACH program: The operator-assisted phone method, the terminal entry method, and the CPU-to-CPU transmission method. All three methods provide for the transmission of loan data to the collection agent and thereby allow the collection agent to use the data to debit the lender's account for payment.

The operator assisted phone method does not require the lender to use a computer. With this method, the lender calls the collection agent's operator via a toll free number and orally provides the loan information for each loan. With the terminal entry method and the CPU-to-CPU method, the lender uses a terminal or personal computer with a modem to connect with the collection agent's computer system. With the terminal entry method, information is provided in response to questions from the computer program of the collection agent. With the CPU-to-CPU transmission, all of the information requested is provided in a pre-programmed data file submitted to the collection agent.

Under the ACH program, the lending institution submits an authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. This information is needed to identify the parties and allow for the transfer of payment. Under all three methods, the collection agent prepares the funding fee file based on the information submitted.

In order to get set up under the ACH program so that the collection agent would be able to debit the lender's account for the funding fee payment, the lender would need to provide the following information: The lender's name and address, the name and phone number of a lender contact person, the lender's VA ID number, the transit routing number of the bank the lender uses, and the lender's bank account number.

The adoption of this proposal would not impose any costs for using the ACH program on veterans or lending institutions. Under the ACH program, the Department of the Treasury contracts with a collection agent who collects funding fees (including late fees and interest) for VA, and the cost for the ACH program is borne by the Department of the Treasury.

It appears that the adoption of the ACH program would be advantageous to veterans and to VA. The adoption of the ACH program would eliminate lost mail and eliminate data errors resulting from

manual recording. Also, accounting reconciliation would be reduced because payments are computerized and cash application is more automated than with systems where payment information must be manually entered by VA personnel. In addition, banking costs would be reduced, since overall electronic transfer costs less than paper check and wire transfer, i.e., on the average $.25 per item electronically versus $.50 by check.

For all transactions received prior to 8:15 p.m. on a workday, VA would be credited with the amount paid to the collection agent at the opening of business the next banking day.

The provisions of §§ 36.4232(a)(3), 36.4254(d)(3), and 36.4312(e)(3) relating to interest and late charges would not change for payments made electronically. A four-percent late charge is assessed if a payment is received 15 calendar days after the closing date, and an interest charge is assessed on the late fee when payment is received 30 calendar days after the closing date. The funding fee receipt, which is mailed, notifies lenders of the amount of any late fee and interest charge.

It is proposed that a final rule become effective January 1, 1998. This would allow lenders time to become familiar with the ACH system.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

The collection of information included in the proposed revision to §§ 36.4232, 36.4254, and 36.4312 in this rulemaking proceeding concerns the requirement that lenders provide VA information necessary to get set up on the ACH system to pay the funding fee electronically and the existing requirement that lenders provide VA certain standard information when submitting loan guaranty funding fees. The collection of the latter information on VA Form 26–8986, Loan Guaranty Funding Fee Transmittal, which is currently submitted with funding fee check payments, has been approved by the Office of Management and Budget through May 31, 1999, under approval No. 2900–0474.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this document between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Title: Loan Guaranty: Electronic Payment of Funding Fee.

Summary of collection of information: The information collection subject to this rulemaking concerns information to get set up on the ACH system to pay the funding fee for a VA-guaranteed loan electronically and information to accompany the funding fee payment.

Description of the need for information and proposed use of information: The collection of information subject to this rulemaking is designed to obtain information about lenders to allow electronic collection of the funding fee and standard identifying information and loan details from lenders relating to the funding fee.

Description of likely respondents: lending institutions.

For information provided to get set up on the ACH system:

Estimated total annual reporting burden: 589 hours.

Estimated annual burden per respondent: 083 hour.

Estimated number of respondents: 7,100.

Estimated annual frequency of responses: 1 per episode.

For information collected with funding fee payments:

Estimated total annual reporting burden: 13,200 hours.

Estimated annual burden per respondent: .033 hour.

Estimated number of respondents: 400,000.

Estimated annual frequency of responses: 1 per episode.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of these proposed regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule implements a program that will enhance operations and be cost beneficial for all participating lenders. Lenders will be able to participate by having access to a personal computer, and personal computing is pervasive within the industry. Lenders will also have the option of paying funding fees by calling an operator who will enter the information into the ACH system for them. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: March 4, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

§ 36.4232 [Amended]

2. In § 36.4232, paragraph (e)(1) is amended by removing "(e)(4)" and adding, in its place, "(e)(5)"; paragraph (e)(2) is amended by removing "paragraphs (e)(4) and" and adding, in its place, "paragraph"; paragraph (e)(3)

is amended by removing "paragraphs (e)(4) and" and adding, in its place, "paragraph"; by redesignating paragraph (e)(4) as paragraph (e)(5); and by adding a new paragraph (e)(4) to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

* * * * *

(e) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or central processing unit-to-central processing unit (CPU-to-CPU) transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a).)

* * * * *

3. Section 36.4254 is amended by redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively; and by adding a new paragraph (d)(4) to read as follows:

§ 36.4254 Fees and charges.

* * * * *

(d) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (d)(1) and (d)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a).)

* * * * *

4. Section 36.4312 is amended by redesignating paragraph (e)(4) as paragraph (e)(5); and by adding a new paragraph (e)(4) to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a).)

* * * * *

[FR Doc. 97–11807 Filed 5–6–97; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI16

Loan Guaranty: Credit Standards

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA's loan guaranty regulations regarding credit standards used by lenders to evaluate the creditworthiness of veteran-borrowers for home loans. VA is committed to regular review and revision of the standards used to determine the creditworthiness of veteran-applicants as issues arise and as the mortgage industry changes. These proposed changes are designed to keep VA in step with the rest of the home mortgage industry, at least to an extent appropriate for a Government benefit-related mortgage program. This document also requests Paperwork Reduction Act comments concerning the collection of information contained in this document.

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI16." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: VA is proposing to amend its loan guaranty regulations regarding credit standards used by lenders to evaluate the creditworthiness of veteran-borrowers for home loans. The regulations proposed to be amended are set forth at 38 CFR 36.4337.

Statutory credit criteria applicable to the VA Loan Guaranty Program are set forth at 38 U.S.C. 3710. Under the VA Loan Guaranty Program, a loan may not be guaranteed unless the veteran is a satisfactory credit risk, and the

contemplated terms of payment required in a mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses. When making a credit determination for a VA-guaranteed loan, the lender must consider that a veteran's benefit is involved. The law intends that the veteran have this benefit provided the requirements of the law are met. However, it serves no purpose to approve or make a loan to a veteran who will be unable to meet the repayment terms or is not a satisfactory credit risk. Such an approval would be, in fact, a disservice since it could well result in the veteran losing the home, a debt being owed by the veteran to the U.S. Government, and an adverse effect on the veteran's credit standing.

VA is committed to regular review and revision of the standards used to determine the creditworthiness of veteran-applicants as issues arise and as the mortgage industry changes. VA recognizes that it is important to keep in step with the rest of the home mortgage industry, at least to an extent appropriate for a Government benefit-related mortgage program.

Accordingly, we are proposing to amend § 36.4337 for the reasons discussed below.

Tax-Exempt Income (Paragraphs (d) and (f))

It is proposed to amend paragraph (d) and to add a new paragraph (f)(4) concerning tax-free income when underwriting a loan. Previously, VA regulations recognized the impact of tax-free income on the debt-to-income ratio (generally higher) through noting it as a compensating factor. However, the mortgage industry has come to require direct recognition through what is generally called "grossing up." This is the adjusting of the tax-exempt income upward to a pre-tax or gross income amount which, after deducting State and Federal income taxes, would equal the tax-exempt income. This enables the calculation of the debt-to-income ratio as if the borrower's income were all taxable and results in the same ratio as a borrower with after-tax income equal to the borrower's tax-exempt income. In recognition of the industry practice, and for consistency, this proposed change to VA regulations would allow "grossing up" for the purpose of calculating the debt-to-income ratio. The actual tax-exempt income would be required to be used in calculating the residual income.

Compensating Factors for Underwriting a Loan (Paragraph (c))

It is proposed to add two additional factors to the list of compensating factors lenders are to consider in the course of underwriting a loan. Upon review, it appears to be appropriate to expand this list to include tax credits for child care and tax benefits of home ownership as additional compensating factors.

Increase in Residual Income Required for Family Support (Paragraph (e))

It is proposed to provide for an increase in the amount of residual income required for family support. The computation of the Residual Income tables set forth in this paragraph is based upon cost-of-living and expenditure data compiled by the U.S. Bureau of Labor Statistics. Based upon VA's review of that data, a 4-percent increase in those guideline amounts appears to be an appropriate reflection of that data.

Inclusion of Household Members in Residual Income Determinations (Paragraph (e))

It is proposed to clarify that the use of residual income guidelines is to be based on consideration of all members of the veteran's household. This reflects that all members of a household (without regard to the nature of the relationship) are relevant to determinations regarding residual income.

Residual Income Tiers (Paragraph (e))

It is proposed to adjust the breakpoint in the two residual income tiers from $70,000 to $80,000. When the tiers were originally established in December 1987, the median VA loan was approximately $70,000. The median loan amount has risen steadily to its current level of approximately $87,000, and it appears that an adjustment would be in order. However, since this revision would constitute a slight loosening of the credit standards, limiting the increase in the breakpoint in the two tiers to $80,000 would be consistent with prudent underwriting policy.

Age of Credit Documentation (Paragraphs (f), (g), and (h))

VA is proposing to change the maximum allowable age of credit documentation to 120 days (or 180, in the case of new construction) from the date the note is signed. This is proposed in order to establish a standard consistent with industry standards and to clarify the baseline for determining the maximum allowable age of credit documents. Previously, the maximum age was 90 days, and, for automatic loans, the baseline was the date of application. The use of the date of application as the baseline sometimes resulted in cases in which the documents were very old by the time they were used to underwrite the borrowers' qualifications. This change would establish a standard more closely tied to the time of the underwriting decision, which is usually made at a time close to loan closing.

Reserves or National Guard (Paragraph (f))

VA is proposing a change to include members of the Reserves or National Guard in the requirements that pertain to active duty applicants within 12 months of release from active duty. Since income received by a member of the Reserves or National Guard can be important to a borrower's ability to qualify for a loan and since Reserves and National Guard are subject to the same downsizing as the active military, those applicants who are within 12 months of completion of their current terms of service would be subject to the same documentation requirements as members of the active military within 12 months of release from active duty.

Verification of Employment (Paragraph (f))

It is proposed to clarify that if an employer puts N/A or otherwise declines to complete the block for "probability of continued employment" on the Verification of Employment (VOE), no further action would be required of the lender. Although written verification of employment forms contain space for the employer to indicate the borrower's probability of continued employment, many employers have adopted the policy of not giving any indication as to such probability. In order to assure that the lender will not be considered to have been deficient in underwriting the loan without the probability of continued employment having been given by the employer, if the space is shown as "NA" or has an indication that the company policy precludes giving such information, no further development of probability of continued employment would be required. The lender would be expected to have made an assessment based on the borrower's overall work history and tenure in his/her current position.

Income Such As Workers' Compensation and Foster Care (Paragraph (f))

It is proposed to clarify when income such as workers' compensation and

foster care income can be used as income. In the past VA has addressed some types of unusual income, but workers' compensation and foster care income have not been addressed. This proposed regulatory change would set forth that such income can be considered when it can be determined to be stable and reliable.

Automobile Allowance or Other Expense Account Type of Income (Paragraph (f))

It is proposed to address income derived from an automobile allowance or other expense account type of income. VA credit standards have not previously addressed "income" derived from automobile or similar allowances, which are often a part of the borrower's overall income. Therefore, VA proposes to add information for determining when an automobile allowance or other expense allowance constitutes income for loan qualification purposes.

Profit and Loss Statements Prepared by Accountants (Paragraph (f))

It is proposed to delete the requirement that profit and loss statements be prepared by an accountant. Inasmuch as full tax returns are required in connection with every self-employed applicant and the cost of an accountant-prepared financial statement can be an excessive burden for very small businesses (e.g., hairdressers or independent house painters), the requirement to submit an accountant-prepared profit and loss statement in every instance would be deleted. Instead, it is proposed that the financial statement must be sufficient for a loan underwriter to determine the necessary information for loan approval and that an independent audit by a Certified Public Accountant would be required if necessary for such determination.

Temporary Income (Paragraph (f))

It is proposed to change the length of time temporary income such as that from public assistance programs must be expected to continue before it can be counted for loan qualification purposes, from "a substantial fraction of the term of the loan, i.e., one-third or more" to 3 years or more. This proposed change is consistent with current industry standards.

Rental Income From a Multi-Unit Residence (Paragraph (f))

It is also proposed to simplify the treatment of rental income in the credit underwriting standards. Existing instructions for consideration of rental income from a multi-unit residence require analysis of the seller's records. Since such records are seldom actually available for review, the regulations are proposed to be changed to provide for use of 75 percent of expected gross rental income, unless documentation supports use of a greater amount. This percentage would be consistent with current industry standards.

Consumer Credit Counseling Plan (Paragraph (g))

It is proposed to state that veterans in a Consumer Credit Counseling (CCC) plan would be treated in the same manner as individuals in a plan under Chapter 13 of the Bankruptcy Code, since CCC plans and Chapter 13 plans are similar programs for those having credit difficulties. This change would incorporate that policy for borrowers with bad credit who entered a counseling program. We also note that the proposed policy would address participation in a CCC plan by a veteran who entered such a program before reaching the point of having bad credit and would not treat the participation as a negative credit item, since we believe this would be unfair.

Chapter 13 Bankruptcy (Paragraph (g))

It is proposed that the provisions be changed regarding when a borrower should be considered a satisfactory credit risk after having filed for relief under Chapter 13 of the Bankruptcy Code. The prior criteria of requiring a Chapter 13 plan be 75 percent completed before a borrower can be found to be a satisfactory credit risk is more stringent when the plan calls for payout over a 5-year period than the requirement for someone who took straight bankruptcy under Chapter 7. This proposed change to accept satisfactory payment over 12 months would remove that inequity and make VA's guideline consistent with other criteria in the industry. Court approval for new credit would still be required.

Chapter 7 Bankruptcy (Paragraph (g))

It is proposed to provide that a Chapter 7 bankruptcy would not cause a person to be considered a bad credit risk if 2 years have elapsed from the date of discharge in bankruptcy and to clarify treatment of more recent bankruptcies. This would eliminate imprecise language concerning longer periods and would bring VA's provisions in line with criteria used in the rest of the industry, including the Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (FNMA), and the Federal Home Loan Mortgage Corporation (Freddie Mac).

Re-establishment of Satisfactory Credit (Paragraph (g))

It is proposed to state when satisfactory credit is considered to be reestablished. One of the frequently asked questions for which VA's credit standards have not previously provided an answer is when to consider that satisfactory credit has been reestablished after a period of bad credit not involving bankruptcy. To be consistent with other criteria involving Consumer Credit Counseling and Chapter 13 plans, 12 months since the date of the last derogatory credit item would be sufficient to consider that satisfactory credit has been reestablished.

Minimum Payment of Monthly Debts (Paragraph (g))

It is proposed to delete the requirement to include in an analysis of monthly debts a minimum payment even if a revolving account has a zero balance. Previously, a requirement to include a minimum payment for a revolving charge that has a zero balance at the time of loan application was intended to offset those who temporarily pay off such an account for the sole purpose of appearing to have a stronger financial status than is usual. However, it is very difficult to distinguish between those with an open account but no balance at the moment, those who seldom use the account and pay it off every month, and those who have not used the account in many months. Since assuming that a borrower will be using the account is potentially unfair, the requirement that a minimum payment amount must be included would be deleted as part of this proposal.

Long-Term and Short-Term Debts (Paragraph (g))

The definition of relatively long-term obligation which must be included in a loan analysis is proposed to be changed from one with remaining payments of at least 6 months to one with remaining payments of at least 10 months. This change would be consistent with current industry standards and with HUD requirements. It is also proposed to remove unnecessary language.

Allotments Shown on Pay Stubs (Paragraph (g))

It is proposed to add a requirement that lenders investigate the reasons for allotments shown on pay stubs or leave and earning statements in order to assure that all debts are properly considered. As pay stubs and leave statements have become a common method of verifying a borrower's

income, it has become common to see allotments on those documents which are not adequately identified as to whether they exist to repay a debt which is not otherwise disclosed by the borrower. This proposed regulatory change would require lenders to investigate to determine if an allotment is related to a debt.

Debts Assigned by Divorce Decree (Paragraph (g))

It is proposed to add a clarification regarding debts assigned to an ex-spouse by a divorce decree. Often the responsibility for a debt that had been jointly established by a veteran and former spouse has been assigned to the former spouse by divorce decree. However, since the debt remains a part of the veteran's credit history, it may appear as an open account on the veteran's credit report. It appears that it would be unfair to consider such debts as the veteran's obligation and, therefore, VA proposes to establish that such debts would not be considered the veteran's obligation.

Collection Accounts (Paragraph (g))

It is proposed to clarify that collection accounts do not necessarily have to be paid off as a condition for loan approval. Only account balances reduced to judgment by a court would be required to be paid in full.

Merged Credit Reports (Paragraph (g))

It is proposed to permit the use of a 3-file merged credit report (MCR) as an alternative to the Residential Mortgage Credit Report (RMCR) currently in use. The use of merged in-file credit reports is growing within the mortgage industry, in light of industry analysis which shows no extra risk associated with using such reports in underwriting mortgages. Therefore, VA proposes to change the credit report requirement to allow the use of MCRs as an alternative to RCMRs. VA already allows the use of the MCR as an alternative to RCMRs for quality control purposes.

Nonsubstantive Changes

In addition to the proposed changes discussed under the specific headings above, nonsubstantive changes would be made for purposes of clarity and to correct typographical errors.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a collection of information is set forth in the provisions of the proposed § 36.4337. This section prescribes the information to be submitted for approval of a VA loan guaranty and contains material which further explains the quality of the information needed for approval. To facilitate access to the collection of information provisions, all of § 36.4337 is included in the text portion of this document. Also, as required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI16."

Title: Credit Standards.

Summary of collection of information: Pursuant to 38 U.S.C. 3710, a loan may not be guaranteed unless the veteran is a satisfactory credit risk. The statute also requires that VA set forth in regulatory form standards to be used by lenders in underwriting VA-guaranteed loans and obtaining credit information. Lenders must collect certain specific information concerning the veteran and the veteran's credit history (and spouse or other co-borrower, as applicable), in order to properly underwrite the veteran's loan. Collection of this information is normal business practice for mortgage lenders. The proposed § 36.4337 would require that the lender provide VA with a certification and other limited information in addition to that which would be required for a non-Government-guaranteed mortgage loan.

Description of need for information and proposed use of information: VA requires the lender to provide the Department with the credit information to assure itself that applications for VA-guaranteed loans are underwritten in a reasonable and prudent manner.

Description of likely respondents: Mortgage lenders who make VA-guaranteed home loans.

Estimated number of respondents: 300,000 in FY 1997; 280,000 in FY 1998.

Estimated frequency of responses: This is a "one-time" request for each application for a VA-guaranteed loan.

Estimated average burden per collection: 10 minutes. VA estimates that an average of 80 minutes would be needed for the portion of the information that would already be collected as normal business practice for mortgage lenders. VA estimates that 10 minutes constitutes the average additional time needed due to the provisions of this information collection.

Estimated total annual reporting and recordkeeping burden: 5000 hours in FY 1997 and 4667 hours in FY 1998 for the information that would not otherwise be collected and retained in the ordinary course of business.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Industry norms for other lending programs already require lenders to comply with most of the proposed

standards set forth in this regulatory package. Further, activities concerning loans subject to the VA Loan Guaranty Program do not constitute a significant portion of activities of small businesses.

(The Catalog of Federal Domestic Assistance Program numbers are 64.106, 64.114, 64.118 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Reporting and recordkeeping requirements, Veterans.

Approved: February 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3729, 3732, unless otherwise noted.

2. Section 36.4337 is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history, are satisfactory.

(b) *Waiver of standards.* Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) *Methods.* The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file), the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent, the second level review and statement of justification are not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in paragraph (c)(5) of this section, justifying the approval of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean that the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on the criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;
(ii) Conservative use of consumer credit;
(iii) Minimal consumer debt;
(iv) Long-term employment;
(v) Significant liquid assets;
(vi) Downpayment or the existence of equity in refinancing loans;
(vii) Little or no increase in shelter expense;
(viii) Military benefits;
(ix) Satisfactory homeownership experience;
(x) High residual income;
(xi) Low debt-to-income ratio;
(xii) Tax credits for child care; and
(xiii) Tax benefits of home ownership.

(6) The list in paragraph (c)(5) of this section is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) of the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. All members of the household must be included in determining if the residual income is sufficient. They must be counted even if the veteran's spouse is not joining in title or on the note, or if there are any other individuals depending on the veteran for support, such as children from a spouse's prior marriage who are not the veteran's legal dependents. It is appropriate, however, to reduce the number of members of a household to be counted for residual income purposes if there is sufficient verified income not otherwise included in the loan analysis, such as child support being regularly received as discussed in paragraph (e)(4) of this section. In the case of a spouse not to be obligated on the note, verification that he/she has stable and reliable employment as discussed in paragraph (f)(3) of this section would allow not counting the spouse in determining the sufficiency of the residual income. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes

have been developed for loan amounts up to $79,999 and for loan amounts of $80,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher-than-average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA-guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets, such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts of $79,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $79,999 and below]

Family size [1]	Northeast	Midwest	South	West
1	390	382	382	425
2	654	641	641	713
3	788	772	772	859
4	888	868	868	967
5	921	902	902	1,004

[1] For families with more than five members, add $75 for each additional member up to a family of seven. "Family" includes all members of the household.

(2) Table of residual incomes by region (for loan amounts of $80,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $80,000 and above]

Family size [1]	Northeast	Midwest	South	West
1	450	441	441	491
2	755	738	738	823
3	909	889	889	990
4	1,025	1,003	1,003	1,117
5	1,062	1,039	1,039	1,158

[1] For families with more than five members, add $80 for each additional member up to a family of seven. "Family" includes all members of the household.

(3) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) *Military adjustments.* For loan applications involving an active-duty serviceperson or military retiree, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e) of this section.)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property states, if the

spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, prohibits any request for, or consideration of, information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling, or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 120 days (180 days for new construction) old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(2) *Active-duty applicants.* (i) In the case of an active-duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 120 days old (180 days for new construction) and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave & Earnings Statement is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(ii) For servicemembers within 12 months of release from active duty, including members of the Reserves or National Guard, one of the following is also required:

(A) Documentation that the servicemember has in fact already reenlisted or extended his/her period of active duty to a date beyond the 12-month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the servicemember that he/she intends to reenlist or extend his/her period of active duty to a date beyond the 12 month period following the projected loan closing date, and a statement from the service member's commanding officer confirming that the service member is eligible to reenlist or extend his/her active duty as indicated and that the commanding officer has no reason to believe that such reenlistment or extension of active duty will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty servicemember is needed to qualify.

(iii) Each active-duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and, thus, should be properly considered in determining ability to meet the mortgage payments. If an employer puts N/A or otherwise declines to complete a verification of employment statement regarding the probability of continued employment, no further action is required of the lender. Reliability will be determined based on the duration of the borrower's current employment together with his or her overall documented employment history. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement, must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income, such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as above. Also, the likely duration of certain military allowances cannot be determined and, therefore, will be used only to offset intermediate-term debts, as above. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and, thus, should be added to the base pay. Income derived from service in the Reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue beyond 12 months. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items

such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify for a loan if it can be determined that the income will probably continue for 3 years or more.

(4) *Tax-exempt income.* Special consideration can be given to verified nontaxable income once it has been established that such income is likely to continue (and remain untaxed) into the foreseeable future. Such income includes certain military allowances, child support payments, workers' compensation benefits, disability retirement payments and certain types of public assistance payments. In such cases, current income tax withholding tables may be used to determine an amount which can be prudently employed to adjust the borrower's actual income. This adjusted or "grossed up" income may be used to calculate the monthly debt-to-income ratio, provided the analysis is documented. Only the borrower's actual income may be used to calculate the residual income. Care should be exercised to ensure that the income is in fact tax-exempt.

(5) *Alimony, child support, maintenance, workers' compensation, foster care payments.* (i) If an applicant chooses to reveal income from alimony, child support or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(ii) If the applicant chooses to reveal income related to workers' compensation, it will be considered as income to the extent it can be determined such income will continue.

(iii) Income received specifically for the care of any foster child(ren) may be counted as income if documented. Generally, however, such foster care income is to be used only to balance the expenses of caring for the foster child(ren) against any increased residual income requirements.

(6) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. A Department of Defense form, DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(7) *Automobile (or similar) allowance.* Generally, automobile allowances are paid to cover specific expenses related to an applicant's employment, and it is appropriate to use such income to offset a corresponding car payment. However, in some instances, such an allowance may exceed the car payment. With proper documentation, income from a car allowance which exceeds the car payment can be counted as effective income. Likewise, any other similar type of allowance which exceeds the specific expense involved may be added to gross income to the extent it is documented to exceed the actual expense.

(8) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(9) *Self-employment.* Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-

employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit-and-loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and balance sheet based on the financial records. The financial statement must be sufficient for a loan underwriter to determine the necessary information for loan approval and an independent audit (on the veteran and/or the business) by a Certified Public Accountant will be required if necessary for such determination; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed Federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(10) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA-guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or an apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of this paragraph (f), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(11) Employment of short duration. The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(12) *Rental income.—(i) Multi-unit subject property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a

landlord will be based on documentation of any prior experience in managing rental units or other collection activities. The amount of rental income to be used in the loan analysis will be based on 75 percent of the amount indicated on the lease or rental agreement, unless a greater percentage can be documented.

(ii) *Rental of existing home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) *Other rental property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(13) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(14) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those states with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(14) *Mortgage credit certificates.* (i) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows states and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30 percent x $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 x $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98–369) or $167 per month ($2,000/12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600—$167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(14)(iii) of this section, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500/12).

(g) *Credit.* The conclusion reached as to whether or not the veteran and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, requires that lenders, in evaluating creditworthiness, shall consider, on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's creditworthiness. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B prohibits any request for or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the veteran and spouse are satisfactory credit risks, the basis for the decision must be explained. If a veteran and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. Such defenses are not applicable when the debt has been reduced to judgment. Where a collection account has been established, if it is determined that the borrower is a satisfactory credit risk, it is not mandatory that such an account be paid off in order for a loan to be approved. Court-ordered judgments, however, must be paid off before a new loan is approved.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last one to two years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period; and

(ii) The bankruptcy was caused by circumstances beyond the control of the borrower or spouse, e.g.,

unemployment, prolonged strikes, medical bills not covered by insurance. Divorce is not generally viewed as beyond the control of the borrower and/or spouse. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. If a borrower or spouse has been discharged in bankruptcy within the past 12 months, it will not generally be possible to determine that the borrower or spouse is a satisfactory credit risk.

(3) *Petition under Chapter 13 of Bankruptcy Code.* A petition under chapter 13 of the Bankruptcy Code filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled-down debts. Regular payments are made to a court-appointed trustee over a 2-to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least 12 months' worth of payments have been made satisfactorily and the Trustee or Bankruptcy Judge approves of the new credit.

(4) *Foreclosures.* (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage; e.g., a VA-guaranteed, or HUD-insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA-guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies that occurred over 3 years ago.

(7) *Consumer credit counseling plan.* If a veteran, or veteran and spouse, have prior adverse credit and are participating in a Consumer Credit Counseling plan, they may be determined to be a satisfactory credit risk if they demonstrate 12 months' satisfactory payments and the counseling agency approves the new credit. If a veteran, or veteran and spouse, have good prior credit and are participating in a Consumer Credit Counseling plan, such participation is to be considered a neutral factor, or even a positive factor, in determining creditworthiness.

(8) *Re-establishment of satisfactory credit.* In circumstances not involving bankruptcy, satisfactory credit is generally considered to be reestablished after the veteran, or veteran and spouse, have made satisfactory payments for 12 months after the date of the last derogatory credit item.

(9) *Long-term v. short-term debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long term, i.e., 10 months or over. Other accounts for terms of less than 10 months must, of course, be considered in determining ability to meet family expenses. Certainly, any severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical months of the home loan.

(10) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 120 days old (180 days for new

construction) to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days of the date of the application is received by VA. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is required when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled. When a pay stub or leave-and-earnings statement indicates an allotment, the lender must investigate the nature of the allotment(s) to determine whether the allotment is related to a debt. Debts assigned to an ex-spouse by a divorce decree will not generally be charged against a veteran-borrower.

(11) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(12) *Credit reports.* Credit reports obtained by lenders on VA-guaranteed loan applications must be either a three-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). If used, the RMCR must meet the standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment (see § 36.4336(a)(3)) of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA.) Verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 120 days (180 days for new construction) of the date of the veteran's application to the lender. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports, such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will

affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) *Definitions.* The definitions contained in part 42 of this title and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint* includes the assessment of liability served pursuant to this section.

(iii) *Defendant* means a lender named in the complaint.

(iv) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.* (i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after the effective date of these regulations, the following certification shall accompany each loan closing or assumption package:

> The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.* (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 3703, 3710.)

[FR Doc. 97–11808 Filed 5–6–97; 8:45 am]
BILLING CODE 8320–0–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN54–1b; FRL–5819–4]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the following as revisions to the Indiana State Implementation (SIP) plan: a Rate-Of-Progress (ROP) plan to reduce volatile organic compound (VOC) emissions in Clark and Floyd Counties by 15 percent (%) by November 15, 1996; 1996 corrections to Clark and Floyd Counties' 1990 base year emission inventory (to establish an accurate base line for the 15% ROP plan); construction permits requiring VOC emission control at Rhodes, Incorporated in Charlestown, Clark County; and a ridesharing program affecting commuters in Clark and Floyd Counties. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before June 6, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation

Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 16, 1997.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 97–11909 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[UT–001–0003b; FRL–5818–5]

Clean Air Act Approval and Promulgation of State Implementation Plan; Utah; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Utah with a letter dated November 20, 1996. The submittal included the State adoption of a new rule, R307–18–1, which incorporates by reference the Federal new source performance standards (NSPS) in 40 CFR part 60, as in effect on March 12, 1996.

In the final rules section of this **Federal Register**, EPA is acting on the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for EPA's action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 6, 1997.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Division of Air Quality, Utah Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: April 18, 1997.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 97–11914 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400111; FRL–5580–1]

RIN 2070–AC00

Addition of Dioxin and Dioxin-Like Compounds; Modification of Polychlorinated Biphenyls (PCBs) Listing; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to a petition filed under section 313(e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), EPA is proposing to add a chemical category that includes dioxin and 27 dioxin-like compounds to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA believes that dioxin and the dioxin-like compounds that are included in the petition, meet the criteria for addition to the list of toxic substances as established in EPCRA section 313(d)(2)(B). EPA is also proposing to modify the existing EPCRA section 313 listing for polychlorinated biphenyls (PCBs) in order to exclude those PCBs that are included in the proposed dioxin and dioxin-like compounds category.

DATES: Written comments must be received by July 7, 1997.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099, Washington, DC 20460, Attention: Docket Control Number OPPTS-400109. Comments containing information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number for this proposal, OPPTS–400111, and the name of the EPA contact for this proposal. Unit VII. of this preamble contains additional information on submitting comments containing information claimed as CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS-400109. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulated Entities

Entities potentially regulated by this action are those which manufacture, process, or otherwise use any of the 28 chemicals included in the proposed category and which are subject to the

reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. However, based on what EPA knows about the sources of the chemicals in the proposed category, EPA believes that, under current reporting thresholds, it is highly unlikely that any entities will be required to report for the proposed chemical category. If thresholds are lowered in the future, then some of the potentially regulated categories and entities would include:

Category	Examples of regulated entities
Industry	Facilities that: incinerate hazardous waste, municipal solid waste, sewage sludge, or other wastes that contain chlorine; manufacture chlorinated organic compounds; operate metallurgical processes such as steel production, smelting operations, and scrap metal recovery furnaces; burn coal, wood, petroleum products, and used tires; treat or dispose of polychlorinated biphenyls.
Federal Government	Federal Agencies that are engaged in the combustion of wastes.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. Statutory Authority

This action is taken under section 313(d)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

C. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA. When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432; November 30, 1994) (FRL–4922–2).

II. Description of Petition

On August 28, 1996, EPA received a petition from Communities For A Better Environment to add dioxin and 27 dioxin-like compounds to the list of chemicals subject to the reporting requirements of EPCRA section 313 and PPA section 6607. The petitioner believes that because dioxin and dioxin-like compounds are highly toxic, persist and bioaccumulate in the environment, and may cause severe adverse health effects, they meet the listing criteria of EPCRA section 313(d)(2). The petitioner also requested that EPA lower the reporting thresholds for these chemicals because under current reporting thresholds no facilities would be required to file a report on these chemicals, and thus the public would not be able to obtain information on releases of these highly toxic and environmentally persistent chemicals. Although the petition to add these chemicals to the EPCRA section 313 list is subject to the 180–day statutory petition response deadline discussed in Unit I.C. of this preamble, the request to lower the reporting thresholds is not subject to this statutory deadline (see EPCRA section 313(f)(2)).

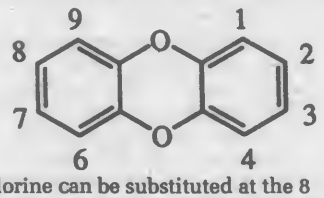
III. Technical Review of the Petition

The technical review of the petition to add dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals included an analysis of the chemistry (Ref. 1), environmental fate (Ref. 2), and health effects (Ref. 3) data available for dioxin and the 27 dioxin-like compounds identified in the petition. A summary of the review of the available data is provided below and a more detailed discussion can be found in the EPA technical reports (Refs. 1, 2, and 3) and other cited references.

A. Chemistry, Use and Sources

The petitioner requested the addition of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals. Dioxin and dioxin-like compounds refers to a group of 28 environmentally stable compounds which includes 7 polychlorinated dibenzo-*p*-dioxins (CDDs), 10 polychlorinated dibenzofurans (CDFs), and 11 co-planar polychlorinated biphenyls (PCBs). The chemical structures and nomenclature for these compounds are discussed below.

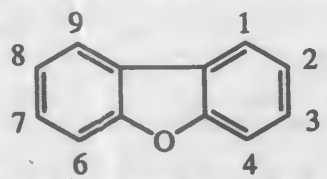
The structure of dibenzo-*p*-dioxin and the conventional numbering system for substituent positions are shown below:



Chlorine can be substituted at the 8 possible positions marked on the two benzene rings to give 75 different congeners of chlorinated dibenzo-*p*-dioxins. Only the seven CDDs, having chlorine substitution at the 2, 3, 7, and 8 positions, are thought to have dioxin-like toxicity (i.e, toxicity similar to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin which is referred to simply as "dioxin" or 2,3,7,8-TCDD). The seven CDDs included in the petition contain four to eight chlorines. The chemical names for the seven CDDs are listed below with their corresponding Chemical Abstract Service Registry Numbers (CAS No.) in parenthesis:

1,2,3,4,6,7,8-heptachlorodibenzo-*p*-dioxin, (35822-46-9)
1,2,3,4,7,8-hexachlorodibenzo-*p*-dioxin, (39227-28-6)
1,2,3,6,7,8-hexachlorodibenzo-*p*-dioxin, (57653-85-7)
1,2,3,7,8,9-hexachlorodibenzo-*p*-dioxin, (19408-74-3)
1,2,3,4,6,7,8,9-octachlorodibenzo-*p*-dioxin, (3268-87-9)
1,2,3,7,8-pentachlorodibenzo-*p*-dioxin, (40321-76-4)
2,3,7,8-tetrachlorodibenzo-*p*-dioxin, (1746-01-6)

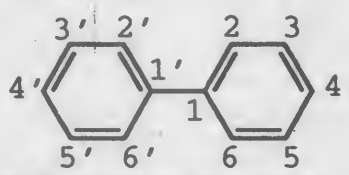
The structure of dibenzofuran and the conventional numbering system for substituent positions are shown below.



Chlorine can be substituted at the 8 possible positions marked on the 2 benzene rings to give 135 different congeners of chlorinated dibenzofurans. Only 10 CDFs, having chlorine substitution at the 2, 3, 7, and 8 positions, are thought to have dioxin-like toxicity. The 10 CDFs included in the petition have 4 to 8 chlorines. The chemical names for the 10 CDFs are listed below with their corresponding CAS Nos. in parenthesis:

1,2,3,4,6,7,8-heptachlorodibenzofuran, (67562-39-4)
1,2,3,4,7,8,9-heptachlorodibenzofuran, (55673-89-7)
1,2,3,4,7,8-hexachlorodibenzofuran, (70648-26-9)
1,2,3,6,7,8-hexachlorodibenzofuran, (57117-44-9)
1,2,3,7,8,9-hexachlorodibenzofuran, (72918-21-9)
2,3,4,6,7,8-hexachlorodibenzofuran, (60851-34-5)
1,2,3,4,6,7,8,9-octachlorodibenzofuran, (39001-02-0)
1,2,3,7,8-pentachlorodibenzofuran, (57117-41-6)
2,3,4,7,8-pentachlorodibenzofuran, (57117-31-4)
2,3,7,8-tetrachlorodibenzofuran, (51207-31-9)

The structure of biphenyl and the conventional numbering system are shown below.



The 10 positions marked on the 2 benzene rings (i.e., 2′, 3, 3′, 4, 4′, 5, 5′, 6, and 6′) can be chlorinated to give 209 different congeners of chlorinated biphenyls. Eleven PCBs believed to have dioxin-like toxicity are included in the petition. These 11 PCBs have 4 to 7 chlorine atoms, but contain no more than 1 chlorine at the 4 ortho positions (i.e., 2, 2′, 6 or 6′) and all have 2 chlorines at the para positions (i.e., 4 and 4′) and at least 2 chlorines at the meta positions (i.e., 3, 3′, 5, or 5′). All 11 are regarded as coplanar PCBs. Coplanar PCBs are those in which the two benzene rings can rotate into the same plane. The two benzene rings can rotate into the same plane since chlorine substitution in only one of the ortho positions does not block the rotation of the two benzene rings over the bond connecting positions 1 and 1′. The chemical names for the 11 PCBs included in the petition are listed below with their corresponding CAS Nos. in parenthesis:

2,3,3′,4,4′,5,5′-heptachlorobiphenyl, (39635-31-9)
2,3,3′,4,4′,5-hexachlorobiphenyl, (38380-08-4)
2,3,3′,4,4′,5′-hexachlorobiphenyl, (69782-90-7)
2,3′,4,4′,5,5′-hexachlorobiphenyl, (52663-72-6)
3,3′,4,4′,5,5′-hexachlorobiphenyl, (32774-16-6)
2,3,3′,4,4′-pentachlorobiphenyl, (32598-14-4)
2,3,4,4′,5-pentachlorobiphenyl, (74472-37-0)
2,3′,4,4′,5-pentachlorobiphenyl, (31508-00-6)
2′,3,4,4′,5-pentachlorobiphenyl, (65510-44-3)
3,3′,4,4′,5-pentachlorobiphenyl, (57465-28-8)
3,3′,4,4′-tetrachlorobiphenyl, (32598-13-3)

Except for laboratory scale preparation for chemical analysis and testing, CDDs and CDFs have never been produced intentionally for any commercial use; rather, they occur as trace contaminants in many chemical-industrial and thermal processes, and may be present in the chemical products and waste streams from such processes. PCBs, however, were commercially produced in large quantities and, as discussed below, were used in the U.S. mainly as nonflammable and heat resistant fluids for transformers and as dielectric media for capacitors. Except for small quantities of PCBs that are inadvertently generated during an excluded manufacturing process and exemptions that have been granted by EPA under section 6(e)(3) of the Toxic Substances Control Act (TSCA) for the manufacture of PCBs for research and development purposes, the manufacturing of PCBs was banned in the U.S. in 1979 and their use and disposal regulated. However, PCBs continue to be released to the environment through the use and disposal of products manufactured years ago.

CDDs and CDFs are classified as chlorinated tricyclic aromatic hydrocarbons and they are structurally very similar and have similar physical and chemical properties. CDDs and CDFs normally exist as complex mixtures of congeners. One of the congeners, 2,3,7,8-TCDD, has been extensively studied due to its high toxicity (Ref. 4). The 7 CDDs and 10 CDFs included in the petition are high melting solids. They have extremely low vapor pressures, are highly insoluble in water, are quite lipophilic, and tend to persist and bioaccumulate in the environment (see Unit III.B. of this preamble for a more complete discussion of environmental fate including persistence and bioaccumulation). They are classified as lipophilic since 2,3,7,8-TCDD is more soluble in many organic solvents, fats, and oils than in water, although the overall solubility of 2,3,7,8-TCDD in organic solvents is quite low. The water solubility of 2,3,7,8-TCDD is about 19 parts per trillion (ppt), while that of 2,3,7,8-tetrachlorodibenzofuran is about 420 ppt. Generally, water solubility decreases as the chlorine substitution increases. The CDDs and CDFs are stable toward heat, oxidation, acids, and alkalies. CDDs and CDFs can be photolyzed by sunlight or ultraviolet radiation (Refs. 5 and 6). The melting point, water solubility, vapor pressure, and log K_{ow} of the 17 CDDs and CDFs included in the petition have all been measured or calculated (Ref. 1).

PCBs differ structurally from CDDs and CDFs, yet some have similar physical and chemical properties. They are chemically stable, have low vapor pressure, have low water solubility (1 part per billion (ppb)), and they are very lipophilic. Due to their high thermal stability, low flammability, high heat capacity, and low electrical conductivity, PCBs, under the U.S. trade name Aroclor series, were highly favored as cooling liquids in electrical equipment from 1929 to 1979. The Aroclor series vary greatly in congener numbers and compositions. Although most of the individual congeners are solids, Aroclors, since they are complex mixtures, exist as oils, viscous liquids, or sticky resins (Ref. 7). PCBs are unchanged in the presence of oxygen and active metals at temperatures up to 170 °C (Ref. 7). Pyrolysis of technical grade PCBs produces CDFs (Ref. 8). In

the presence of a hydrogen donor, PCBs undergo photodechlorination when exposed to sunlight or ultraviolet radiation. With the exception of the vapor pressure for 1 PCB, EPA has identified measured or calculated melting points, vapor pressures, and log K_{ow}s for each of the 11 PCBs (Ref. 1).

From 1929 to 1977, PCBs were produced commercially in the U.S. in large quantities by catalytic partial chlorination of biphenyl under heated conditions to produce complex mixtures, each containing 60 to 90 different congeners and a specific percent of chlorine (Refs. 7 and 9). Because of their excellent thermal resistance and dielectric properties, PCBs were used mainly as insulators for transformers and as a dielectric medium for capacitors. PCBs were also used as plasticizers; ingredients in lacquers, printing inks, paints and varnishes, and adhesives; waterproofing compounds in various types of coatings; dye carriers for pressure-sensitive copying paper; lubricants or lubricant additives under extreme conditions; heat transfer fluids; fire resistant hydraulic fluids; and as vacuum pump fluids (Refs. 10 and 11). The production of PCBs peaked at 33,000 tons in 1970 (Ref. 7). Although PCBs are no longer produced in the U.S. (except as discussed earlier in this Unit) and other industrialized countries, PCBs continue to be released into the environment through the use and disposal of products containing or contaminated with PCBs, and by the reintroduction of PCBs into the air and water from previously contaminated soil and sediment. Disposal and use of PCBs and PCB-containing materials have been regulated by EPA under TSCA since 1978 (Ref. 12). Some uses of PCBs are allowed, but the uses are very restrictive (Ref. 13).

CDDs and CDFs are not produced commercially and there are no known commercial uses. CDDs and CDFs are produced in small amounts in laboratories for use in chemical analysis, and they are generated in trace amounts as byproducts from various chemical and combustion processes (Refs. 14 and 15). CDDs and CDFs can be produced from aromatic or potentially aromatic forming compounds in the presence of a chlorine source. The formation is enhanced under alkali conditions at elevated temperatures or in the presence of air upon heating. Industrial products, most likely to be contaminated with CDDs and CDFs, are polychlorinated phenols, polychlorinated diphenyl ethers, and other polychlorinated aromatic compounds (Ref. 15). CDDs and CDFs share most of the same precursor compounds, but chlorinated biphenyls form only corresponding furans and chlorinated 2-hydroxy phenyl ethers form only dioxins.

The largest identified source for CDDs and CDFs is the combustion of waste (municipal, medical, and hazardous) (Refs. 4, 14, 15, and 16). Other sources include pulp and paper mills (from chlorine bleaching processes); oil refineries (catalyst regeneration processes); manufacture of chlorinated organic chemicals (chlorinated phenols and other aromatics, chlorinated aliphatic solvents and monomers, herbicides, etc.); combustion and incineration of wastes; steel production and smelting operations; and energy generation (combustion of coal, wood, petroleum products, tires etc.). The dioxin-like compounds have been found in all environmental media (air, water, soil, sediments) and foods.

B. Environmental Fate

There is a good general understanding of the environmental fate and transport of CDDs, CDFs, and PCBs. CDDs and CDFs are primarily associated with particulate and organic matter in air, water, soil, and sediment, although vapor phase transport and deposition of lower chlorinated CDDs and CDFs does occur and is important to human exposure (Ref. 17). CDDs and CDFs with four or more chlorines are extremely stable in most environmental media and thus may be classified as persistent organic pollutants (POPs).

CDDs and CDFs entering the atmosphere are removed by either photodegradation or wet/dry deposition (Refs. 18 and 19). For CDDs and CDFs sorbed to soil, burial in place or movement to water bodies by erosion of the soil are the predominant fate. CDDs and CDFs entering the aquatic environment primarily undergo sedimentation and burial. Resuspension of sediments can be an important route of exposure to fish and other aquatic organisms. Benthic sediments are believed to be the ultimate environmental sink (Ref. 20).

Coplanar PCBs, like CDDs and CDFs, have very low water solubilities and tend to sorb strongly to organic matter in soils and sediments. However, they have somewhat higher vapor pressures than the CDDs and CDFs. Atmospheric transport and deposition are thought to be the principal mechanisms that account for the widespread environmental distribution of CDDs, CDFs, and PCBs (Ref. 21).

Like CDDs and CDFs, PCBs are quite stable and may be classified as POPs. Soil erosion and sediment transport in water bodies and volatilization from soil and water with subsequent atmospheric transport and deposition are believed to be the dominant transport mechanisms, and account for the widespread environmental occurrence of PCBs (Ref. 22). Photodegradation of the more highly chlorinated congeners to less chlorinated products can be a significant transformation process for PCBs exposed to light (Ref. 23). There is now a substantial body of evidence indicating that microbial dehalogenation resulting in less chlorinated PCBs also occurs and may be a significant fate process under anaerobic conditions, principally in sediments (Refs. 22, 24, and 25). However, dehalogenation is a slow process that occurs over a time frame of years.

CDDs, CDFs, and PCBs are very hydrophobic compounds, and this is reflected by their high estimated or measured octanol/water partition coefficients. Because of their high lipophilic nature, these compounds accumulate to a significant level in the fatty tissues of biota. This potential has been amply documented in both experimental and monitoring studies for many of the compounds. Measured bioconcentration factors (BCFs) for all the CDDs, CDFs, and PCBs included in the petition consistently exceed 1,000 (and may be much higher), indicating that they are all bioaccumulative (Refs. 26 and 27).

CDDs, CDFs, and PCBs are found in measurable levels in human tissues across the general population. Typical levels for U.S. adults determined from literature data (Ref. 28) are 30 ppt toxic equivalents (TEQ) for CDDs and CDFs and 20 ppt TEQ for PCBs. TEQs are determined by summing the products of multiplying concentrations of individual dioxin-like compounds times the corresponding toxicity equivalence factor (TEF) for that compound (TEFs are discussed in Unit III.C. of this preamble). The principal route of human exposure is thought to be consumption of animal fats (e.g., beef, pork, poultry, milk, dairy products, and fish) (Ref. 29). For meat and dairy products, the mechanism by which these foods become contaminated is thought to be air deposition onto plants which are then eaten by livestock (Refs. 21 and 30). Fish absorb these compounds directly from water or contact with sediments (Ref. 27).

C. Toxicity Evaluation

EPA has done extensive risk and hazard assessments over the years for dioxin and dioxin-like compounds and is in the final stages of reassessment of these compounds based on up-to-date

data. The reassessment is looking at many things including the sources of these chemicals and potential exposures. While not yet final, nothing in the current reassessment indicates less than high hazard levels for these compounds. Therefore, the reassessment will not change the toxicity determination as it relates to the EPCRA section 313 listing criteria.

An extensive data base exists showing that 2,3,7,8-TCDD is a potent toxicant in animals and has the potential to produce a wide spectrum of toxic effects in humans. There is sufficient evidence to conclude that 2,3,7,8-TCDD is carcinogenic in experimental animals (Refs. 4, 31, 32, and 33).

Long-term studies in rats, mice, hamsters and Medaka (a small fish) using various routes of administration all produced positive results at dose levels well below the maximum tolerated dose (MTD), leading to the conclusion that 2,3,7,8-TCDD is a potent carcinogen. Depending on the species of the animal, the principal target organs are the liver, lung, thyroid gland, and nasal-oral cavities by oral administration. When administered topically, 2,3,7,8-TCDD induced skin tumors in mice. Available human data cannot clearly demonstrate whether a cause and effect relationship exists between 2,3,7,8-TCDD exposure and increased incidence of cancer. However, there are a number of epidemiological studies associating exposure to 2,3,7,8-TCDD with increased cancer mortality (Refs. 4 and 32). Based on the EPA weight-of-evidence classification criteria, there is sufficient evidence to conclude that 2,3,7,8-TCDD is a probable human carcinogen. It has been listed by the National Institute of Environmental Health Sciences/ National Toxicology Program (NIEHS/ NTP) as a substance which may reasonably be anticipated to be a human carcinogen (Ref. 31). Based on the 1985 slope factor (Ref. 4) 2,3,7,8-TCDD is the most potent chemical carcinogen that EPA has regulated.

Similarly, there is sufficient evidence for the carcinogenicity of PCBs in experimental animals (Refs. 34 and 35). Based on the evidence from animal studies and inadequate/limited evidence for carcinogenicity to humans, PCBs are classified as group B2, probable human carcinogens by EPA (Ref. 36) and are listed as substances which may reasonably be anticipated to be human carcinogens in the NIEHS/ NTP Annual Report on Carcinogens (Ref. 31).

In addition to carcinogenic effects, 2,3,7,8-TCDD and PCBs have been shown to cause a variety of adverse effects in laboratory animals (Refs. 32, 33, and 35). Humans exposed to 2,3,7,8-TCDD or PCBs in a number of incidents have been reported to develop chloracne, liver disorders, porphyria, and neurological changes (Refs. 4, 33, and 35). In a number of animal species tested, including fish, birds, and mammals, 2,3,7,8-TCDD has been shown to induce various reproductive, fetotoxic and teratogenic responses. With a No Observed Effect Level (NOEL) of about 0.001 micrograms per kilogram (µg/kg) in reproductive toxicity studies in rats, and a Minimum Effective Dose (MED) of about 0.1 µg/kg/day in teratogenicity studies in rats and mice, 2,3,7,8-TCDD is one of the most, if not the most, potent reproductive/ developmental toxicant known. Studies in various animal species have also demonstrated that the immune system is a target for toxicity of 2,3,7,8-TCDD. 2,3,7,8-TCDD has been shown to cause decreases in thymic and splenic weights, and alter serum immunoglobin levels in mice at oral doses as low as 0.01 ug/kg/week (Refs. 4 and 33).

The 11 dioxin-like PCBs are believed to have toxicities similar to CDDs and CDFs. In addition, PCBs as a class display a variety of adverse human health effects. Reproductive dysfunction due to exposure to PCBs has been documented in a wide variety of animal species including the rat, mouse, rabbit, monkey, and mink. Irregular menstrual cycle, decreased mating performance, early abortion, as well as resorption are the most commonly observed effects. Teratogenic effects have been noted in mice, dogs, and chickens which showed various skeletal deformities. Data from animal studies suggest that the immune system is also a sensitive target for toxicity of PCBs. Thymic atrophy, cellular alterations in the spleen and lymph nodes accompanied by reduced antibody production have been observed in rats, rabbits, and monkeys exposed to PCBs by various routes (Refs. 8 and 35).

There are more limited data for other dioxin-like compounds. However, many of these compounds, especially those with chlorine or bromine substitution at the 2,3,7,8-positions, are generally recognized to exhibit toxicity and carcinogenicity similar to 2,3,7,8-TCDD. Indeed, carcinogenesis bioassays of a mixture of 1,2,3,6,7,8- and 1,2,3,7,8,9-hexachlorodibenzo-*p*-dioxin have shown that these compounds are carcinogenic, inducing liver tumors in both sexes of rats and mice (Ref. 37).

Presently, there is considerable evidence showing that the initial event involved in carcinogenesis and toxicity of dioxin and dioxin-like compounds is their stereospecific interaction with a cytosolic receptor (Ah receptor) (Ref. 38). Because of their common mechanism of action, Toxicity Equivalence Factors (TEFs) have been established for dioxin-like compounds. TEFs represent order of magnitude estimates of the relative potency of dioxin-like compounds compared to 2,3,7,8-TCDD, and have been considered by EPA and the international scientific community to be a valid and scientifically sound approach for assessing the likely health hazard of dioxin-like compounds (Ref. 39). Structure-activity relationship analysis of halogenated dibenzo-*p*-dioxin, dibenzofuran, and related compounds indicates that the degree of toxicity of these dioxin-like compounds is dependent on the number and positions of chlorine substitutions; all the lateral positions (2, 3, 7, and 8) must be chlorinated to achieve the greatest degree of toxicity. Examination of all the dioxin and dioxin-like compounds (7 CDDs and 10 CDFs) specified in the petition revealed that they all contain chlorine at the 2, 3, 7, and 8 positions. The range of the TEFs for CDDs and CDFs is between 0.5 and 0.001, indicating that they are estimated to be about half to three orders of magnitude less toxic than 2,3,7,8-TCDD. The PCBs included in this proposal also have proposed TEF values which range from 0.1 to 0.00001 (Ref. 40). Nonetheless, all of these dioxin-like compounds are potent carcinogens and highly toxic compounds given the level of toxicity of 2,3,7,8-TCDD (Refs. 32, 33, and 35).

Therefore, based on the available toxicity data, it is concluded that the 7 CDDs, 10 CDFs, and 11 PCBs specified in this petition are highly toxic and are reasonably anticipated to cause serious adverse health effects, including cancer, in humans.

IV. Technical Summary

EPA's technical review revealed that dioxin and dioxin-like compounds are known to cause chloracne, immunotoxicity, reproductive/ developmental effects, and cancer in experimental animals, and that it is reasonable to anticipate that these chemicals will also cause cancer and other serious adverse chronic health effects in humans. The review also shows that dioxin and dioxin-like compounds are chemically stable compounds that persist and bioaccumulate in the environment.

V. Petition Response and Rationale

EPA is proposing to grant the petition to add dioxin and dioxin-like compounds to the EPCRA section 313

list of toxic chemicals. However, as discussed in Unit V.C. of this preamble, EPA is not proposing to lower reporting thresholds for these compounds at this time.

A. Proposed Addition of a Chemical Category

EPA is proposing to add a delimited chemical category entitled "Dioxin and Dioxin-like Compounds" to the EPCRA section 313 list of toxic chemicals. This delimited category will include the 28 individual chemicals identified by name and CAS number under Unit III.A. of this preamble. The technical review of dioxin and dioxin-like compounds indicates that these chemicals are highly toxic and persist and bioaccumulate in the environment. EPA believes that the toxicity data for these chemicals clearly indicate that these chemicals are known to cause or can reasonably be anticipated to cause cancer and other serious chronic health effects in humans. Therefore, EPA believes that dioxin and dioxin-like compounds meet the EPCRA section 313(d)(2)(B) criteria for listing. In addition, because dioxin and dioxin-like compounds can reasonably be anticipated to cause high chronic toxicity and cancer, EPA does not believe that an exposure assessment is necessary to conclude that these compounds meet the toxicity criterion of EPCRA section 313(d)(2)(B). For a discussion of the use of exposure in EPCRA section 313 listing/delisting decisions, see 59 FR 61432, November 30, 1994.

As EPA has explained in the past (59 FR 61432, November 30, 1994), the Agency believes that EPCRA allows a chemical category to be added to the list, where EPA identifies the toxic effect of concern for at least one member of the category and then shows why that effect can reasonably be expected to be caused by all other members of the category. Here, individual toxicity data do not exist for each member of the proposed category; however, as discussed in Unit III.C. of this preamble, there is sufficient information to conclude that all of these chemicals are highly toxic based on structural and physical/chemical property similarities to those members of the category for which data are available.

For purposes of EPCRA section 313, threshold determinations for chemical categories must be based on the total of all chemicals in the category (see 40 CFR 372.25(d)). For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories, the releases are determined in the same manner as the thresholds. One report is filed for the category and all releases are reported on one Form R (the form for filing reports under EPCRA section 313 and PPA section 6607).

B. Modification of Current Listing for PCBs

The current EPCRA section 313 list of toxic chemicals includes a listing for polychlorinated biphenyls (PCBs) under the CAS No. 1336–36–3. This is a broad listing that includes all chlorinated 1,1'-biphenyls, not just the ones that are proposed to be included in the dioxin and dioxin-like compounds category. The non-dioxin-like PCBs are also toxic and EPA is not proposing to remove them from the EPCRA section 313 list. However, EPA is proposing to modify the current PCBs listing to exclude those PCBs that are listed as part of the new category in order to avoid having some PCBs reportable under two listings, which might lead to double reporting. EPA is proposing to modify the current PCB listing to read "polychlorinated biphenyls (PCBs) (excluding those PCBs listed under the dioxin and dioxin-like compounds category)."

C. Deferral of Lower Reporting Thresholds

The petitioner also requested that EPA lower the reporting thresholds for dioxin and dioxin-like compounds. This request is not subject to the statutory 180–day petition response deadline in EPCRA section 313(e)(1) and EPA intends to address this request as part of the Agency's ongoing project to assess the utility and impacts of lowering reporting thresholds for EPCRA section 313 listed toxic chemicals that persist and bioaccumulate in the environment. EPA has initiated this project in response to concerns that chemicals that persist and bioaccumulate in the environment can have a cumulative effect and therefore it is important for the public to be able to track even low releases of such chemicals. The current reporting thresholds of 25,000 pounds for manufacturing or processing and 10,000 pounds for otherwise use are high enough that many biologically significant releases of persistent bioaccumulative chemicals are usually not reported.

EPA believes that rather than proposing lower reporting thresholds for dioxin and dioxin-like compounds at this time, this issue should be considered within the context of lower reporting thresholds for all EPCRA section 313 listed toxic chemicals that persist and bioaccumulate in the environment. Taking this approach will provide adequate time for EPA to evaluate and address issues pertaining to the use of lower reporting thresholds for these chemicals. Therefore, EPA is not proposing to lower the reporting thresholds for the dioxin and dioxin-like compounds category proposed as part of today's petition response. However, EPA is requesting comment on the issue of lower reporting thresholds for these compounds.

D. Schedule for Final Rule

Based on what EPA knows about the sources of the chemicals in the proposed dioxin and dioxin-like compounds category, EPA believes that, under current reporting thresholds, it is highly unlikely that any reports would be filed for the category if it were added to the EPCRA section 313 list. EPA believes that delaying final action to add this category to the EPCRA section 313 list will not result in a loss of significant information. Therefore, if after consideration of comments received on this proposed rule, EPA decides to finalize the addition of the category, EPA will postpone that action until a rule lowering the reporting thresholds for the category is ready to be finalized. EPA intends to address the issue of lower reporting thresholds for the dioxin and dioxin-like compounds category within the next year.

VI. Request for Public Comment

EPA requests general comments on this proposal to add the delimited dioxin and dioxin-like compounds category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. Further, EPA requests comment on the issue of lowering the EPCRA section 313 reporting thresholds for the proposed dioxin and dioxin-like compounds category. Comments should be submitted to the address listed under the ADDRESSES unit at the front of this document. All comments must be received by July 7, 1997.

VII. Rulemaking Record

A record, that includes the references in Unit VIII. of this preamble, has been established for this rulemaking under docket control number OPPTS–400111 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public

record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at: oppt.ncic@epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of any special characters and any form of encryption.

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

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38. Poland, A. and Knutson, J.C.; "2,3,7,8-Tetrachlorodibenzo-*p*-dioxin and Related Halogenated Aromatic Hydrocarbons: Examination of the Mechanism of Toxicity." *Ann. Rev. Pharmacol. Toxicol.* v. 22, (1982), p. 517.

39. Safe, S.; "Polychlorinated Biphenyls, Dibenzo-*p*-dioxin and Dibenzofurans and Related Compounds: Environmental and Mechanistic Considerations Which Support the Development of Toxic Equivalency Factors." *CRC Crit. Rev. Toxicol.* v. 21, (1990), pp. 51-88.

40. Ahlborg, U.G. et al., "Toxic Equivalency Factors for Dioxin-Like PCBs: Report on a WHO-ECEH and IPCS Consultation December 1993." *Chemosphere* v. 28, (1994), pp. 1049-1067.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is subject to review by the Office of Management and Budget (OMB). Pursuant to the terms of this Executive Order, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this proposed action does not have a significant adverse economic impact on a substantial number of small entities. Based on what EPA currently knows about the sources of the chemicals in the proposed category, EPA believes that, under the current EPCRA section 313 reporting thresholds, it appears unlikely that any reports would be filed for the proposed category. Nevertheless, it is possible that 1 or more of the 13 facilities that currently report under the existing PCBs listing might process enough of the specific PCB members of the proposed category to exceed current reporting thresholds. Since, as discussed elsewhere in this proposed rule, the chemicals in the proposed category clearly meet the listing criteria of EPCRA section 313(d)(2), EPA is proposing to add them even though current projected reports are few. EPA estimates that the cost of reporting for any facility that exceeds reporting thresholds would be $3,023 and the cost to EPA of processing and reporting any filed report would be $77. EPA believes that under current reporting thresholds the proposed rule would not have a significant impact on facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Currently, facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may either use the EPA Toxic Chemical Release Inventory Form R (EPA Form #9350-1), or the EPA Toxic Chemical Release Inventory Form A (EPA Form #9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternate threshold for those facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year for that chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042; 40 CFR part 350).

OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control #2070-0093 (EPA ICR #1363); those related to Form A under OMB Control #2070-0143 (EPA ICR #1704); and those related to trade secret designations under OMB Control #2050-0078 (EPA ICR #1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, 48 CFR Chapter 15, and displayed on the information collection instruments (e.g., forms, instructions, etc.).

For Form R, EPA estimates the industry reporting and recordkeeping burden for collecting this information to average 74 hours per report in the first year, at an estimated cost of $4,587 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of $3,023 per Form R. For Form A, EPA estimates the burden to average 49.4 hours per report in the first year, at an estimated cost of $3,101 per Form A. In subsequent years, the burden is estimated to average 34.6 hours per report, at an estimated cost of $2,160 per Form A. These estimates include the time needed to become familiar with the requirement (first year only); review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden to any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. Upon promulgation of a final

rule, the Agency may determine that the existing burden estimates in both ICRs need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB, requesting that the total burden in each ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please submit your comments within 60 days as specified at the beginning of this proposal. Copies of the existing ICRs may be obtained from Sandy Farmer, OPPE Regulatory Information Division, Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epamail.epa.gov."

D. Unfunded Mandates Reform Act and Executive Order 12875

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), or require prior consultation as specified by section 204 of the UMRA and Executive Order 12875 (58 FR 58093, October 28, 1993).

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the Agency has determined that there are no environmental justice related issues with regard to this action since this action would add a reporting requirement for all covered facilities including those that may be located near minority or low-income populations.

List of Subjects in 40 CFR Part 372

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

Dated: April 28, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

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

Authority: 42 U.S.C. 11013 and 11028.

2. Section 372.65 is amended by revising the entry for polychlorinated biphenyls under paragraph (a), revising the CAS number entry for 1336-36-3 under paragraph (b), and by adding alphabetically one category to paragraph (c) to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical	CAS No.	Effective date
* *	* *	*
Polychlorinated biphenyls (PCBs) (excluding those PCBs listed under the dioxin and dioxin-like compounds category).	1336-36-3	1/1/87
* *	* *	*

* * * * *

(b) * * *

CAS No.	Chemical name	Effective date
*	* * *	*
1336-36-3	Polychlorinated biphenyls (PCBs) (excluding those PCBs listed under the dioxin and dioxin-like compounds category).	1/1/87
*	* * *	*

* * * * *

(c) * * *

Category name	Effective date
* * *	*
Dioxin and Dioxin-Like Compounds: (This category includes only those chemicals listed below)	1/98
39635-31-9 2,3,3',4,4',5,5'-Heptachlorobiphenyl	
67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran	
55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran	
38380-08-4 2,3,3',4,4',5-Hexachlorobiphenyl	
69782-90-7 2,3,3',4,4',5'-Hexachlorobiphenyl	
52663-72-6 2,3',4,4',5,5'-Hexachlorobiphenyl	
32774-16-6 3,3',4,4',5,5'-Hexachlorobiphenyl	
70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran	
57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran	
72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran	
60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran	
39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin	
57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin	
19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin	
35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin	
39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin	
32598-14-4 2,3,3',4,4'-Pentachlorobiphenyl	
74472-37-0 2,3,4,4',5-Pentachlorobiphenyl	
31508-00-6 2,3',4,4',5-Pentachlorobiphenyl	
65510-44-3 2',3,4,4',5-Pentachlorobiphenyl	
57465-28-8 3,3',4,4',5-Pentachlorobiphenyl	
57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran	
57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran	
40321-76-4 1,2,3,7,8-Pentachlorodibenzo-*p*-dioxin	
32598-13-3 3,3',4,4'-Tetrachlorobiphenyl	
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran	
01746-01-6 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin	

Category name	Effective date
* * *	*

[FR Doc. 97–11899 Filed 5–6–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–126, RM–9074]

Radio Broadcasting Services; Saint Florian, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Fredrick A. Biddle dba Power Valley Enterprises, requesting the allotment of Channel 274A to Saint Florian, Alabama, as that community's first local aural transmission service. Petitioner is requested to provide additional documented information to establish Saint Florian's status as a community for allotment purposes. Coordinates used for Channel 274A at Saint Florian are 34–57–08 and 87–39–30.

DATES: Comments must be filed on or before June 23, 1997, and reply comments on or before July 8, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's consultant, as follows: Kirk A. Tollett, Commsouth Media, Inc., 716 North Miller Avenue, P.O. Box 810, Crossville, TN 38557–0810.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–126, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11827 Filed 5–6–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–127; RM–9077]

Radio Broadcasting Services; Moorcroft, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel A at Moorcroft, Wyoming, as the community's first local aural transmission service. Channel A can be allotted to Moorcroft in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel A at Moorcroft are North Latitude 44–15–54 and West Longitude 104–57–06.

DATES: Comments must be filed on or before June 23, 1997, and reply comments on or before July 8, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Counsel for Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–127, adopted April 23, 1997, and released May 2, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–11828 Filed 5–6–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 564]

Service Obligations Over Excepted Track

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board seeks comments from all interested persons on the circumstances under which it should require a railroad to operate over excepted track that does not meet Federal Railroad Administration (FRA)

class 1 track safety standards, and that the operating railroad deems to be unsafe.

DATES: Notices of intent to participate are due by May 27, 1997. Shortly thereafter, a list of participants will be issued. Comments are due by July 7, 1997. Replies are due by August 5, 1997.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 564: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.

Also, send one copy to each party on the list of participants.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a decision in *GS Roofing Products Company, Inc., Beazer West, Inc., D/B/A Gifford Hill & Company, Bean Lumber Company and Curt Bean Lumber Company* v. *Arkansas Midland Railroad and Pinsly Railroad Company, Inc.*, Docket No. 41230 (STB served Mar. 11, 1997) (*GS Roofing*),[1] we reviewed a fact-specific complaint concerning whether a railroad's embargo of certain "excepted" track that had been operated at less than FRA "class 1" operating standards was unlawful so as to support a request for damages for failure to provide service during the period of the embargo. We found that it was not unlawful.

In our *GS Roofing* decision, we addressed, in general terms, the relationship between the common carrier obligation and a railroad's determination to impose an embargo. We pointed out (at 2 n.5) that a carrier's common carrier obligation is not extinguished by its imposition of an embargo. We also noted (at 8) that, "under its common carrier obligation, a railroad's primary responsibility is to restore safe and adequate service within a reasonable period of time over any line as to which it has not applied for abandonment authority." Nevertheless, in the *GS Roofing* case, we concluded that the carrier's initial determination to embargo the track was reasonable, as the track had been damaged by flooding and the carrier thus had reasonably concluded that the track was unsafe. We also found that the carrier's continuation of the embargo for approximately two months, before it determined whether to repair the track or instead to seek to abandon or sell it, was not unreasonable.

We recognize that, in some circumstances, excepted track may be safe, if it is operated at appropriate speeds and under appropriate operating conditions. For that reason, and because an embargo does not extinguish the common carrier obligation, the Interstate Commerce Commission (ICC), our predecessor with respect to railroad regulation, found a carrier liable for not repairing excepted track and resuming operations over it in *Louisiana Railcar, Inc.* v. *Missouri Pacific R.R.*, 5 I.C.C.2d 542, 546 (1989), a case that we cited in our *GS Roofing* decision.

Nonetheless, a railroad may be of the view that certain excepted track—even track that has not been expressly condemned by the FRA—is not safe. In light of the implications of the Government forcing a carrier to operate over track that the carrier may reasonably believe is unsafe, the ICC historically used class 1 standards as the minimum level of safety compliance at which a railroad would be required to operate.

Because our *GS Roofing* decision was fact-specific, we did not address, beyond the general principles noted earlier, the circumstances under which a railroad's refusal to provide service over excepted track would be deemed to be unreasonable. Nevertheless, our decision has apparently generated some confusion, and indeed has been characterized as having held that railroads can, as a matter of course, avoid their common carrier obligation simply by declaring their track to be excepted track.

Those questions—although they go well beyond any matter addressed in the fact-specific *GS Roofing* decision itself, are significant, and of broad interest. Accordingly, we are initiating sua sponte this proceeding to address the circumstances under which we should require a railroad to provide service to shippers over track that does not meet FRA class 1 track safety standards, and that the carrier has concluded is not safe. We seek the views not only of the operating railroads and their shippers, but also of rail labor, whose members operate over the track at issue; the FRA, which is responsible for administering the railroad track safety program; state and local governments that are involved with rail transportation planning and programs; and any other interested persons. Depending on the nature of the submissions presented, we will determine at a future date whether to propose formal rules, issue a policy statement, or continue to proceed on a case-by-case basis, as we and the ICC have done in the past.

Decided: April 28, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–11877 Filed 5–6–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Petition for review pending, *GS Roofing Products Company, Inc., et al.* v. *Surface Transportation Board*, No. 97–107 (8th Cir.).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970213030–7030–01; I.D. 020597B]

RIN: 0648–AJ77

Central Title and Lien Registry for Limited Access Permits

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

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: NMFS extends for 3 months the comment period for an advance notice of proposed rulemaking (ANPR) about a central title and lien registry for limited access fishing permits. Parties responding to the ANPR's original comment period requested a 6-month extension.

DATES: Comments must be submitted by August 5, 1997.

ADDRESSES: Send comments to: Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable at (301) 713–2390.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act requires a title and lien registry for limited access fishing permits. The registry will be the exclusive means of perfecting title to these permits. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances against these permits.

NMFS wanted the public's guidance before proposing regulations. We published the ANPR in the March 6, 1997, **Federal Register** (62 FR 10249). The ANPR's comment period ended on April 7, 1997.

We received five comments. One was from a law firm representing a coalition

of fisheries lenders. One was from another law firm representing a group of fisheries investors. One was from a company representing a fisheries trade association. Two were from individual citizens.

Both law firms requested, on behalf of their clients, a 6-month extension of the ANPR's comment period in which to submit more detailed comments. There was a substantial lack of consensus on many aspects of the ANPR.

We recognize the importance of a collaborative and deliberative process. We value consensus. Some of the issues are complex. Nevertheless, we believe three months should be a sufficient comment-period extension. Accordingly, we extend the ANPR's comment period for three months.

We welcome all comments on any Registry aspect.

This notice's comment-period extension has been determined to be not significant for purposes of E.O. 12866.

Dated: May 1, 1997.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–11836 Filed 5–6–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 88
Wednesday, May 7, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042797C]

Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of modification of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA), issued to the U.S. Air Force (USAF) on July 17, 1996, to take small numbers of marine mammals by harassment incidental to launches of Lockheed-Martin launch vehicles (LMLVs) at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (Vandenberg), has been modified.

EFFECTIVE DATE: The authorization is effective from May 1, 1997 until July 17, 1997.

ADDRESSES: The application, authorization and modification are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, 301–713–2055.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1996, NMFS received an application from the USAF, Vandenberg, requesting continuation of an authorization for the harassment of small numbers of harbor seals incidental to launches of LMLVs at SLC–6, Vandenberg. These launches would place commercial payloads into low earth orbit. Because of the requirements for circumpolar trajectories of the LMLV and its payloads, the use of SLC–6 is the only feasible alternative for LMLV launches within the United States. As a result of the noise associated with the launch itself and the resultant sonic boom, these noises have the potential to cause a startle response to those harbor seals which haul out on the coastline south and southwest of Vandenberg.

Background information and rationale was provided with the notice of receipt of the application and proposed authorization that was published on May 2, 1996 (61 FR 19609), and are not repeated here. A 30-day public comment period was provided on the application and proposed authorization. After review of the comments received on the application, NMFS concluded that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, would have only a negligible impact on the species, and would result in the least practicable impact on the stock. Accordingly, NMFS determined that the requirements of section 101(a)(5)(D) of the MMPA had been met and the incidental harassment authorization was issued on July 17, 1996 (61 FR 384437, July 24, 1996).

Summary of Request

Condition 7(b) of the IHA requires the USAF to observe harbor seal activity on haul-outs in the vicinity of SLC–6 before and after each LMLV launch and to monitor this activity using either still photography or video when biological observations cannot be made. On March 12, 1997, NMFS received a request from the USAF requesting an amendment to condition 7(b) by waiving nighttime video monitoring of the launch of an LMLV scheduled from Vandenberg during nighttime in May 1997.

Because the upcoming launch of the LMLV at SLC–6 is a nighttime launch, when harbor seals are not expected to be hauled out in any numbers, and, because video monitoring at night is not effective, a waiver of condition 7(b) and a modification of the IHA is appropriate.

Accordingly, NMFS amended Condition 7(b) of the IHA on the date indicated above (see **EFFECTIVE DATES**) as follows:

"b. Biological observations on harbor seal activity, must commence at least 48 hours prior to the planned launch and continue for a period of time not less than 48 hours subsequent to launching, and must be supplemented by video recording of mother-pup seal responses for daylight launches during the pupping season; and"

It should be noted however, that the USAF is required to comply with all of the other conditions of the IHA, including observations of harbor seal activity, as required in the IHA. In addition, should the launch be delayed until daylight, video monitoring would be required, since the planned launch will take place during the harbor seal pupping season.

Dated: April 30, 1997.

Hilda Diaz-Soltero,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–11791 Filed 5–6–97; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 022497A

Fisheries Bycatch Plan

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

ACTION: Notice of availability; extension of comment period.

SUMMARY: NMFS announces the extension of the public comment period on the draft NMFS bycatch plan, *Managing the Nation's Bycatch: Priorities, Programs and Actions for the National Marine Fisheries Service*. The NMFS bycatch plan will guide the agency's bycatch-related research and management for the next decade. The public comment period is hereby extended to June 30, 1997, to give members of the public additional time to review and comment on the draft plan. Any written comments received will be considered by NMFS in the adoption and implementation of the final bycatch plan.

DATES: Written comments will be accepted on or before June 30, 1997.

ADDRESSES: Requests for copies of the NMFS bycatch plan should be directed to the NMFS Office of Science and Technology, 1315 East-West Highway, Silver Spring, MD. 20910. PHONE:(301)713–2363. FAX: (301)713–1875. The NMFS bycatch plan is also available in its entirety on the Internet at http://kingfish.ssp.nmfs.gov/.

FOR FURTHER INFORMATION CONTACT: John Witzig or Liz Lauck, (301) 713–2365.

SUPPLEMENTARY INFORMATION:

Background

Interest in bycatch in the Nation's fisheries has received increased attention in the last decade. During this time, NMFS and its constituents have come to agree that fisheries bycatch is an issue of great concern to those interested in sustainable fisheries and marine ecosystems. Congress has emphasized NMFS' responsibility to address bycatch in the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act.

Issues in each of NMFS' administrative regions and on the national level are addressed in detail in the draft NMFS bycatch plan. This discussion forms the basis for a set of research and management recommendations that will help guide the agency's bycatch-related activities. Broadly, recommendations in the plan address the acquisition of bycatch data, gear technology and selectivity research, the effects of bycatch, research on individual incentive programs to manage bycatch, development and implementation of conservation and management measures to address bycatch, and information exchange and cooperative management.

A notice of availability of the draft NMFS bycatch plan was published in the **Federal Register** on April 2, 1997 (62 FR 15659). The draft NMFS bycatch plan continues to generate significant public interest and NMFS would like to ensure that all interested members of the public have adequate time to comment on the draft plan. Thus, NMFS is extending the deadline for public comments on the draft plan to June 30, 1997. All comments received on or before that date will be considered in development of the final plan.

Request for Comments

NMFS intends that the final version of the bycatch plan will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with this draft NMFS Bycatch Plan.

Dated: May 1, 1997.

Nancy Foster,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 97–11835 Filed 5-6-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Inventions Available for Licensing

AGENCY: Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice.

SUMMARY: The United States Department of Energy, Federal Energy Technology Center hereby announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207–209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage and may also be available for licensing. A copy of issued patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

ADDRESSES: Assistant Counsel for Intellectual Property, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505.

FOR FURTHER INFORMATION CONTACT: Lisa A. Jarr, Assistant Counsel for Intellectual Property, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26505; Telephone (304) 285–4555; E-mail: LJARR@FETC.DOE.GOV.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the **Federal Register.**

ISSUED PATENTS

Number	Title
4,969,928	Combined Method for Simultaneously Dewatering and Reconstituting Finely Divided Carbonaceous Material.
5,379,902	Method for Simultaneous Use of a Single Additive for Coal Flotation, Dewatering, and Reconstitution.

Patent Applications Filed

Combustor Oscillation Attenuation Via the Control of Fuel-Supply Line Dynamics

Porous Desulfurization Sorbent Pellets Containing a Reactive Metal Oxide and an Inert Zirconium Compound

Dynamically Balanced Fuel Nozzle

Periodic Equivalence Ratio Modulation for Control of Combustion Oscillations

Dated: April 25, 1997.

Rita A. Bajura,

Director, FETC.

[FR Doc. 97–11850 Filed 5–6–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia); Notice

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, May 21, 1997: 6:30 pm–9:35 pm (Mountain Standard Time).

ADDRESSES: North Valley Community Center, 3825 4th Street, NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:30 p.m.—DOE Quarterly Meeting
7:30 p.m.—Public Comment Period
7:40 p.m.—Approval of Agenda

7:45 p.m.—Approval of 3/19/97 Minutes (Postponed from 4/16/97 Meeting)
7:50 p.m.—Approval of 4/16/97 Minutes
7:55 p.m.—Chair's Report—Jesse D. Dompreh
8:10 p.m.—Break
8:20 p.m.—Membership/Nominating Committee Report
8:35 p.m.—WEB Site Report
8:55 p.m.—Issues Committee Report
9:05 p.m.—New/Other Business
9:15 p.m.—Agenda Items for Next Meeting
9:20 p.m.—Public Comment Period
9:25 p.m.—Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, May 21, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 am and 4 pm, Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on May 2, 1997.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 97–11847 Filed 5–6–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, May 22, 1997, 6 p.m.–9 p.m.

ADDRESSES: Heath High School (cafeteria), 4330 Metropolis Lake Road, West Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Updates on the Environmental Management and Enrichment Facilities Project report, the Federal Facility Agreement, and the membership drive; reviews of the 10-Year Plan and the Draft Work Plan; and presentations on the Waste Area Groups 6 and 22.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 am and 4 pm, Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8 am and 5 pm on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on May 2, 1997.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 97–11848 Filed 5–6–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2045–000]

AMVEST Power, Inc.; Notice of Issuance of Order

May 2, 1997.

AMVEST Power, Inc. (AMVEST) submitted for filing a rate schedule under which AMVEST will engage in wholesale electric power and energy transactions as a marketer. AMVEST also requested waiver of various Commission regulations. In particular, AMVEST requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by AMVEST.

On April 15, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by AMVEST should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, AMVEST is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of AMVEST's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 15, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11864 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–58–003]

East Tennessee Natural Gas Company; Notice of Tariff Filing

May 1, 1997.

Take notice that on April 28, 1997, East Tennessee Natural Gas Company (East Tennessee), filed the revised tariff sheets listed on Appendix A to the filing, in compliance with the Commission's April 18, 1997 order in this proceeding. East Tennessee Natural Gas Company, 79 FERC ¶61,051 (1997) (April 18 Order). East Tennessee proposes an effective date of June 1, 1997 for the revised sheets.

East Tennessee states that the revised tariff sheets reflect the changes to East Tennessee's tariff required by the April 18 Order to the tariff sheets submitted with East Tennessee's March 3, 1997 GISB compliance filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11799 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–1–130–001]

Gas Transport, Inc.; Notice of Compliance Filing

May 1, 1997.

Take notice that on April 28, 1997, Gas Transport, Inc. (GTI) tendered for filing, Sub. First Revised Sheet No. 5 as part of its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Letter Order issued by the Federal Energy Regulatory Commission in Docket No. TM97–1–130–000 on April 22, 1997.

GTI states that its filing is necessary to reflect the correct Annual Charge Adjustment surcharge of $.0020.

GTI requests the Commission waive, to the extent necessary, its Regulations to permit this tariff sheet to become effective April 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11805 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–157–002]

Gas Transport, Inc.; Notice of Correction to Tariff Filing

May 1, 1997.

Take notice that on April 28, 1997, Gas Transport, Inc. (GTI) tendered for filing Sub. Second Revised Sheet No. 5 as a correction to part of its FERC Gas Tariff, Second Revised Volume No. 1.

GTI states that this correction is necessary to reflect the corrected Annual Charge Adjustment surcharge as filed concurrently in Docket No. TM97–1–130–000, in compliance with the Commission's Letter Order issued April 22, 1997, in that docket.

GTI requests that the Commission waive, to the extent necessary, its notice requirement in the Letter Order in Docket No. RP97–157–000, to permit this tariff sheet to become effective June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11800 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–342–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1997.

Take notice that on April 28, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of May 29, 1997.

Kern River states that the purpose of this filing is to propose tariff changes that are needed as a result of Kern River's filing to adopt the standardized business practices which were issued by the Gas Industry Standards Board (GISB) and approved by the Commission. Specifically, Kern River is proposing tariff revisions to: 1) Require non-electronically submitted nominations to be submitted earlier than electronically submitted nominations; 2) establish a time line for intra-day nominations; and 3) formalize Kern River's existing pooling policy as required by the Commission's March 6, 1997 Order (78 FERC ¶ 61,251 (1997).) which directs Kern River to "file a pooling proposal under NGA Section 4 to comply with the GISB standards, and include in its tariff the GISB provisions related to pooling".

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11804 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–302–006]

Northern Natural Gas Company; Notice of Compliance Filing

May 1, 1997.

Take notice that on April 28, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

2nd Substitute 31st Revised Sheet No. 53
Substitute 32 Revised Sheet No. 53
Substitute 33 Revised Sheet No. 53
2nd Substitute 3rd Revised Sheet No. 291

Northern states that the above sheets address Northern's penalty provisions and are being filed in compliance with the Commission's Order issued March 28, 1997 in Docket No. RP96–302–004 (March 28 Order).

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11798 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–183–003]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

May 1, 1997.

Take notice that on April 28, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1 the pro forma tariff sheets listed below:

Sixth Revised Sheet No. 207
First Revised Sheet No. 207A

Texas Gas states that the instant filing is in compliance with the provisions of Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004 and set forth the proposed changes to Texas Gas's tariff required to implement additional Standards of the Gas Industry Standards Board (GISB). Texas Gas states that, upon Commission review and action, it will file the final tariff sheets implementing GISB standards to become effective on or before November 1, 1997.

Texas Gas states that copies of the pro forma tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP97–183.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11802 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–159–004]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 1, 1997.

Take notice on April 28, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are listed on Attachment B to the filing. The proposed effective date for the tariff sheets is August 1, 1997.

Transco states that the purpose of the instant filing is to comply with the Commission's Order No. 587–C, and that the changes made in the pro forma tariff sheets filed therewith are those changes required to comply with Order No. 587–C.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filling are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11801 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–341–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

May 1, 1997.

Take notice on April 28, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1,

certain revised tariff sheets which tariff sheets are listed on Attachment A to the filing. The proposed effective date for the tariff sheets is June 1, 1997.

Transco states that the purpose of the instant filing is to remove from Transco's tariff all those provisions which permit nominations for transportation and storage serviced on Transco's system to be made by any method other than electronic communication. Transco states that with the revisions proposed in its filing, all transportation and storage nominations on Transco's system would be required to be made electronically, either through Transco's TRANSIT system or through electronic data interchange.

Transco states that it is serving copies of the instant filing of customers, State Commission and other 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, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11803 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–58–000, et al.]

Jorf Lasfar Energy Company SCA, et al.; Electric Rate and Corporate Regulation Filings

April 29, 1997.

Take notice that the following filings have been made with the Commission:

1. Jorf Lasfar Energy Company SCA

[Docket No. EG97–58–000]

On April 21, 1997, Jorf Lasfar Energy Company SCA (Applicant), with its principal office at c/o CMS Generation Co., Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a company duly incorporated under the laws of Morocco, and will operate through a subcontractor two existing 330 MW coal-fired units and construct and operate through a subcontractor two additional 348 MW units. Electric energy produced by the Facility will be sold at wholesale to the state-owned Office National de l'Electricite. In no event will any electric energy be sold to consumers in the United States.

Comment date: May 22 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CSW Power Marketing, Inc.

[Docket No. ER97–777–000]

Take notice that on April 17, 1997, CSW Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER97–861–000]

Take notice that on April 11, 1997, Portland General Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. CSW Power Marketing, Inc.

[Docket No. ER97–1238–000]

Take notice that on April 17, 1997, CSW Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. APRA Energy Group, Inc.

[Docket No. ER97–1643–000]

Take notice that on April 17, and April 18, 1997, APRA Energy Group, Inc. tendered for filing amendments in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Valero Power Services Company

[Docket No. ER97–1847–000]

Take notice that on April 21, 1997, Valero Power Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic Energy, Inc.

[Docket No. ER97–2132–000]

Take notice that on April 21, 1997, Atlantic Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER97–2161–000]

Take notice that on April 14, 1997, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER97–2536–000]

Take notice that on April 14, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER97–2537–000]

Take notice that on April 14, 1997, Wisconsin Public Service Corporation, tendered for filing executed service agreements with CNG Power Services Corporation under its CS–1 Coordination Sales Tariff.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. El Paso Marketing Services Company

[Docket No. ER97–2538–000]

Take notice that on April 14, 1997, El Paso Marketing Services Company, tendered for filing a Notice of Succession changing its name from El Paso Energy Marketing Company to El

Paso Marketing Services Company, effective April 1, 1997.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. El Paso Energy Marketing Company

[Docket No. ER97–2539–000]

Take notice that on April 14, 1997, El Paso Energy Marketing Company, tendered for filing a Notice of Succession changing its name from EPEM Marketing Company to El Paso Energy Marketing Company, effective April 1, 1997.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER97–2540–000]

Take notice that on April 14, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing a Notice of Cancellation of NMPC's FERC Rate Schedule No. 238 and any supplements thereto with Associated Power Services.

NMPC requests that this cancellation become effective June 1, 1997.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER97–2541–000]

Take notice that on April 14, 1997, Wisconsin Public Service Corporation ("WPSC"), tendered for filing an executed Transmission Service Agreement between WPSC and itself. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2542–000]

Take notice that on April 14, 1997, Central Hudson Gas and Electric Corporation ("CHG&E"), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's ("Commission") Regulations in 18 CFR a Service Agreement between CHG&E and USGEN Power Services, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 ("Power Sales Tariff") accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER97–2543–000]

Take notice that on April 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Carolina Power and Light Company under LG&E's Open Access Transmission Tariff.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Lykes Duke/Louis Dreyfus, Ltd.

[Docket No. ER97–2544–000]

Take notice that on April 15, 1997, Lykes-Duke/Louis Dreyfus, Ltd. ("Lykes/DLD"), tendered for filing a request for cancellation of its FERC Electric Rate Schedule No. 1 to be effective on April 14, 1997. The Applicant states that the Lykes-DLD Joint Venture has been terminated.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER97–2545–000]

Take notice that on April 15, 1997, Florida Power & Light Company ("FPL"), tendered for filing proposed service agreements with Equitable Power Services Company for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1997.

FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER97–2546–000]

Take notice that on April 15, 1997 The Dayton Power and Light Company ("Dayton") submitted service agreements establishing CMS Marketing Services and Trading Company, and Atlantic City Electric Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon CMS Marketing Services and Trading Company, and Atlantic City Electric Company, and the Public Utilities Commission of Ohio.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Dayton Power and Light Company

[Docket No. ER97–2547–000]

Take notice that on April 15, 1997, The Dayton Power and Light Company ("Dayton") submitted service agreements establishing Amp Ohio as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Amp Ohio and the Public Utilities Commission of Ohio.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Company

[Docket No. ER97–2548–000]

Take Notice that on April 15, 1997, Pennsylvania Power & Light Company ("PP&L"), filed a Service Agreement dated April 1, 1997 with Orange and Rockland Utilities, Inc. ("Orange and Rockland") under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Orange and Rockland as an eligible customer under the Tariff.

PP&L requests an effective date of April 15, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Orange and Rockland and to the Pennsylvania Public Utility Commission.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southwestern Public Service Company

[Docket No. ER97–2549–000]

Take notice that on April 15,1997, Southwestern Public Service Company ("Southwestern") submitted an executed service agreement under its open access transmission tariff with ConAgra Energy Services, Inc. The

service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER97–2550–000]

Take notice that on April 15, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Powerex.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective April 3, 1997.

A copy of this filing was caused to be served upon Powerex as noted in the filing letter.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER97–2551–000]

Take notice that on April 15, 1997, Florida Power & Light Company ("FPL"), tendered for filing proposed service agreements with Cinergy Services, Inc. for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Energy Services, Inc.

[Docket No. ER97–2570–000]

Take notice that on April 10, 1997, Northeast Energy Services, Inc. tendered for filing: a Notice of Cancellation its FERC Rate Schedule No. 1 for the sale of electricity energy and capacity at market-based rates, request for waiver of notice period, and request for expedited treatment of request for waiver.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Pool

[Docket Nos. OA97–237–000 and ER97–1079–000]

Take notice that on February 14, 1997 and April 18, 1997 New England Power Pool tendered for filing amendments in the above-referenced dockets.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11806 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2014–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

April 30, 1997.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER97–2014–000]

Take notice that on April 10, 1997, PacifiCorp tendered for filing an amendment in the above-referenced docket.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Long Island Lighting Company versus Northeast Utilities Service Company

[Docket No. EL97–34–000]

Take notice that on April 1, 1997, Long Island Lighting Company tendered for filing a complaint against Northeast Utilities Service Company and motions to compel for summary disposition and for an expedited schedule.

Comment date: May 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

[Docket No. OA97–569–000]

Take notice that on March 26, 1997, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) tendered for filing an Open Access Transmission Service Tariff (Tariff) to comply with the Commission's Order No. 888–A (Order on Rehearing), Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Service by Public Utilities. (62 FR 12274 (1997)). The Tariff supersedes ComEd's open access transmission service tariff, which the Commission accepted for filing in docket No. OA96–166–001. ComEd requests that the Tariff be made effective as of April 1, 1997.

ComEd states that it has served a copy of this filing, by U.S. Mail, first class postage prepaid, on all entities that have taken wholesale transmission service from ComEd since the issuance of the Commission's Open Access NOPR in Docket No. RM95–8–000, on the state agencies that regulate the retail electric rates of ComEd and such customers, and on each party listed on the official service lists for docket Nos. OA96–166–000 and ER96–2776–000.

Comment date: May 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Company

[Docket No. ER97–2101–000]

Take notice that on April 24, 1997, Southwestern Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power and Light Company

[Docket No. ER97–2552–000]

Take notice that on April 15, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing a Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing The Cincinnati Gas & Electric Company, PSI Energy, Inc. (collectively Cinergy Operating Companies) and Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies, as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of April 7,1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER97–2553–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and CNG Power Services Corporation (CNG).

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER97–2554–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and LG&E Power Marketing Inc. (LG&E).

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–2555–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Kansas Gas & Electric Company (KG&E).

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–2556–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Union Electric Company (UE).

Comment date: May 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER97–2557–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Empire District Electric Company (EDE).

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER97–2558–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and the Power Company of America.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER97–2559–000]

Take notice that on April 16, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Edison Source.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company

[Docket No. ER97–2560–000]

Take notice that on April 16, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Southern Energy Trading and Marketing, Inc. (Southern Energy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Southern Energy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER97–2561–000]

Take notice that on April 16, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 10, 1997, between KCPL and Omaha Public Power District. KCPL proposes an effective date of March 19, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company

[Docket No. ER97–2562–000]

Take notice that on April 16, 1997, Minnesota Power & Light Company (MP), tendered for filing a copy of an umbrella service agreement with Blue Earth Light & Water Department under which short-term transactions may be made in accordance with MP's cost-based Wholesale Coordination Sales Tariff WCS–1, which was accepted for filing by the Commission in Docket No. ER95–163–000.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER97–2563–000]

Take notice that on April 16, 1997, MidAmerican Energy Company, tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of the following:

1. Fifth Revised Sheet No. 16, superseding Fourth Revised Sheet No. 16;
2. Third Revised Sheet Nos. 17 and 18, superseding Second Revised Sheet Nos. 17 and 18;
3. Second Revised Sheet Nos. 19 and 20, superseding First Revised Sheet Nos. 19 and 20; and
4. First Revised Sheet No. 21.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.*, 75 FERC ¶61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the period January 1, 1997 through March 31, 1997.

MidAmerican proposes an effective date of January 1, 1997 for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the *Southern Company Services, Inc.* order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. American Ref-Fuel Company of Delaware County, L.P. and Delaware Resource Management, Inc.

[Docket No. ER97–2564–000]

Take notice that on April 16, 1997, American Ref-Fuel Company of Delaware County, L.P. (ARC), a Delaware limited partnership, with its principal place of business at c/o American Ref-Fuel Company, 770 North Eldridge, Houston, TX 77079, filed with the Federal Energy Regulatory Commission, pursuant to Part 35 of the Commission's Regulations, an application for acceptance for filing of notice of succession and a petition for waiver of Commission rules not appropriately applicable to qualifying facilities.

The Notice of Succession requests redesignation of Delaware Resource Management, Inc.'s Rate Schedule No. 1 and Rate Schedule No. 2 as ARC's Rate Schedule No. 1 and Rate Schedule No. 2. The change is required as a request.

Copies of the filing were served upon the public utility's jurisdictional customers.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER97–2565–000]

Take notice that on April 16, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 10, 1997, between KCPL and Cinergy Services, Inc. KCPL proposes an effective date of March 24, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Kansas City Power & Light Company

[Docket No. ER97–2566–000]

Take notice that on April 16, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 11, 1997, between KCPL and Central and South West Services. KCPL proposes an effective date of March 19, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services Inc.

[Docket No. ER97–2567–000]

Take notice that Cinergy Services, Inc. (Cinergy), on April 16, 1997, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Enabling Agreement, dated March 25, 1997 between Cinergy, CG&E, PSI and New York Power Authority (Authority).

The Enabling Agreement provides for sale on a market basis.

Cinergy and Authority have requested an effective date of one day after this initial filing of the Enabling Agreement.

Copies of the filing were served on New York Power Authority, the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER97–2568–000]

Take notice that on April 16, 1997, Western Resources, Inc. tendered for filing non-firm transmission agreements between Western Resources and Delhi Energy Services, Inc. and Equitable Power Services Company. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective April 11, 1997.

Copies of the filing were served upon Delhi Energy Services, Inc., Equitable Power Services Company and the Kansas Corporation Commission.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company)

[Docket No. ER97–2569–000]

Take notice that on April 16, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing the Second 69 kV Transmission Line Tap Construction Agreement (Agreement) between the City of Sauk Centre (City) and NSP dated March 21, 1997. Under this Agreement City and NSP agreed that NSP will modify its Douglas County—Black Oak 69 kV Transmission Line #0794 at Sauk Centre at City's cost to provide a second 69 kV

transmission line tap into City's substation.

NSP requests the Agreement be accepted for filing effective April 17, 1997, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation

[Docket No. ER97–2572–0000]

Take notice that on April 14, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Northwestern Wisconsin Electric Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Black Hills Corporation

[Docket No. ER97–2576–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on April 14, 1997, tendered for filing an executed Form Service Agreement with PacifiCorp.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective March 17, 1997.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER97–2577–000]

Take notice that on April 14, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing four Service Agreements between PG&E and (1) Aquila Power Corporation (Aquila); (2) San Diego Gas & Electric Company (SDG&E); (3) Citizens Lehman Power Sales (Citizens); and, (4) Cinergy Services, Inc. (Cinergy); each entitled, Service Agreement for Non-Firm Point-to-Point Transmission Service (Service Agreements).

PG&E proposes that the Service Agreements become effective on March 19, 1997 for Aquila, March 24, 1997 for SDG&E, March 25, 1997 for Citizens, and April 1, 1997 for Cinergy. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission, Aquila, SDG&E, Citizens and Cinergy.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Montaup Electric Company

[Docket No. ER97–2578–000]

Take notice that on April 15, 1997, Montaup Electric Company (Montaup) filed Appendix IV to its FERC Electric Tariff, Original Volume IV. The purpose of filing Appendix IV is to show the unbundled transmission and ancillary services rate components for power sales under its system sales tariff. Montaup does not propose any change of rates. Montaup also filed First Revised Sheet No. 21, which is simply a list of Appendices.

Montaup requests waiver of the prior notice requirement to permit Appendix IV to become effective April 16, 1997. Montaup has made this filing to comply with the Commission's unbundling requirements.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Kentucky Utilities Company

[Docket No. ER97–2579–000]

Take notice that on April 15, 1997, Kentucky Utilities Company (KU) tendered for filing service agreements for Non-Firm Transmission Service between KU and Coastal Electric Services Company (CESC) and American Electric Power Service Corporation (as agent for the AEP companies).

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER97–2580–000]

Take notice that on April 15, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with The Washington Water Power Company (WPP), as a Transmission Customer.

A copy of the filing was served upon WPP.

The Service Agreement is for firm point-to-point transmission service.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Interstate Power Company

[Docket No. ER97–2581–000]

Take notice that on April 15, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and Cinergy Operating Companies. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Cinergy Operating Companies.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Puget Sound Energy, Inc.

[Docket No. ER97–2582–000]

Take notice that on April 15, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with the Bonneville Power Administration, (Bonneville), as Transmission Customer.

The Service Agreement is for firm point-to-point transmission service.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Pacific Gas and Electric Company

[Docket No. ER97–2583–000]

Take notice that on April 15, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement respectively entitled Special Facilities Agreement for the Installation, Operation and Maintenance of Parallel Interconnection Facilities for the Lawrence Livermore National Laboratory (Agreement) between PG&E and the United States of America, Department of Energy, Oakland Operations Office (DOE/OAK).

The purpose of the Agreement is to facilitate payment of PG&E's costs of designing, constructing, procuring, installing, testing, placing in operation, owning, operating and maintaining certain modifications to PG&E's Tesla Substation, requested by DOE/OAK and required for the permanent parallel connection of the Lawrence Livermore National Laboratory (LLNL) to PG&E and for the parallel operation at LLNL of the transmission systems of PG&E and the Western Area Power Administration (Western). Under the Agreement, PG&E proposes to charge DOE/OAK a monthly rate equal to the Cost of Ownership Rate for transmission level, customer financed facilities filed with the California Public Utilities Commission (CPUC). The Cost of Ownership Rate is expressed as a monthly percentage of the installed costs of the Special Facilities.

PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate but cap the rate at 0.38% per month.

Copies of this filing have been served upon DOE/OAK, Western and the CPUC.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Energy, Inc.

[Docket No. ER97–2584–000]

Take notice that on April 15, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with British Columbia Power Exchange Corporation (Powerex), as Transmission Customer. A copy of the filing was served upon Powerex.

The Service Agreement is for firm point-to-point transmission service.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Company of New Mexico

[Docket No. ER97–2585–000]

Take notice that on April 16, 1997, Public Service Company of New Mexico (PNM) submitted for filing pursuant to Section 205 of the Federal Power Act its proposed Electric Coordination Tariff No. 1 to provide the basis for various coordination services. PNM states that its tariff is consistent with the requirement contained in the Commission's Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996) that economy energy transactions be unbundled. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Northern Indiana Public Service Company

[Docket No. ER97–2586–000]

Take Notice that on April 16, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and CMS Marketing, Services and Trading Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to CMS Marketing, Services and Trading Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Niagara Mohawk Power Corp.

[Docket No. ER97–2587–000]

Take notice that on April 16, 1997, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 137 and any supplements thereto.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. New England Power Company

[Docket No. ER97–2589–000]

Take notice that on April 17, 1997, New England Power Company (NEP) filed a service agreement with Duke/Louis Dreyfus Energy Services (New England) L.L.C. for non-firm, point-to-point transmission service under NEP's open access transmission service, FERC Electric Tariff, Original Volume No. 9.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Illinois Power Company

[Docket No. ER97–2590–000]

Take notice that on April 17, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Equitable Power Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1997.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. New York State Electric & Gas Corporation

[Docket No. ER97–2600–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 3, 1997, tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.13, a supplement (Supplement) to Rate Schedule FERC No. 177 (Rate Schedule). The Supplement revises a power sales agreement (Agreement) between NYSEG and Energy Transfer Group, L.L.C. (ETG). The Agreement provides for the sale by NYSEG of electric generating capacity and/or associated energy to ETG, the rates for which are subject to cost-based rate ceilings contained in Appendix A to the Agreement. The Supplement consists of a revised Appendix A, which eliminates the $1.00 per MWH adder in the energy component of the rate ceiling for such transactions.

NYSEG requests that the Supplement be deemed effective as of February 15, 1997, the effective date of the Agreement. To the extent required to give effect to the Supplement, NYSEG requests waiver of the notice requirements pursuant to Section 35.11 of the Commission's Regulations, 18 CFR 35.11.

NYSEG served copies of the filing on the New York State Public Service Commission and ETG.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Central Louisiana Electric Co.

[Docket No. ER97–2602–000]

Take notice that on April 18, 1997, Central Louisiana Electric Company, Inc., (CLECO) tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Entergy Power Marketing Corp. under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Entergy Power Marketing Corp.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11863 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2466–017]

Appalachian Power Company; Notice of Availability of Environmental Assessment

May 1, 1997.

An environmental assessment (EA) is available for public review. The EA is for proposed spillway stability improvements to the Niagara Hydroelectric Project (FERC No. 2466). The EA finds that approval of the proposed improvements would not constitute a major federal action significantly affecting the quality of the human environment. The Niagara Hydroelectric Project is located on the Roanoke River in Roanoke County, Virginia.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219–1206.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11796 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–323]

Duke Power Company; Notice of Availability of Environmental Assessment

May 1, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing (OHL) has reviewed Duke Power Company's application requesting Commission authorization to: (1) Grant an easement to the Town of Valdese, North Carolina (Valdese) to expand its raw water withdrawal facilities on 0.04 acres of land within the boundary of the Catawba-Wateree Project, and (2) allow Valdese to withdraw up to 12 million gallons per day (mgd) of water from Lake Rhodhiss.

The staff of OHL's Division of Licensing and Compliance has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the Commission's staff has analyzed the environmental impacts of the proposed project and has concluded that approval of the licensee's proposal 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 2A of the Commission's offices at 888 First Street, NE., Washington, DC 20426 or by calling the Commission's Public Reference Room at (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11795 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 9648–011, 9649–011, and 9650–020]

Westinghouse Electric Corporation (Fellows Dam Project, Lovejoy Dam Project, and Gilman Dam Project); Notice of Availability of Environmental Assessment

May 1, 1997.

A draft environmental assessment (DEA) is available for public review. The DEA examines plans for the installation of downstream Atlantic Salmon fish passage at the Fellows Dam Project, Lovejoy Dam Project, and Gilman Dam Project, all located on the Black River, Vermont. The DEA recommends the planning and installation of downstream fish passage at the Fellows Dam and Lovejoy Dam projects, following final consultation with the U.S. Fish and Wildlife Service and Vermont Department of Fish and Wildlife. The DEA finds that safe downstream passage already exists at the Gilman Project through the open natural downstream channel adjacent to that project. The DEA also finds that approval of the work would not constitute a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, 888 First Street, N.E., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 9648–011, 9649–011, and 9650–020 to all comments. For further information, please contact the project manager, Pete Yarrington, at (202) 219–2939.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11797 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–337–000, et al.]

Koch Gateway Pipeline Company, et al. Natural Gas Certificate Filings

April 29, 1997.

Take notice that the following filings have been made with the Commission:

1. Koch Gateway Pipeline Company

[Docket No. CP97–337–000]

Take notice that on April 11, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–337–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Delhi Gas Pipeline Corporation certain gathering and transmission facilities located in Goliad, DeWitt, Karnes and Bee Counties, Texas; all as more fully set forth in the Application which is on file with the Commission and open for public inspection.

Specifically, Koch Gateway seeks to abandon by sale, the Cabeza Creek Gathering System consisting of approximately 102 miles of various gathering lines ranging from 2-inch to 12-inch pipeline and the Cabeza Creek Compressor Station; and approximately 24 miles of 8-inch, 10-inch, and 16-inch transmission pipeline.

Comment date: May 20, 1997, in accordance with Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP97–361–000]

Take notice that on April 21, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP97–361–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Constitution Gas Transport Company, Inc. (Constitution) certain transmission, gathering, and related land rights and services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to abandon its Liscom Creek Compressor Station and 12.0 miles of 3 and 4-inch diameter pipeline all located in Cluster County, Montana. Williston Basin proposes to sell the facilities to Constitution for $120,000.

Comment date: May 20, 1997, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP97–369–000]

Take notice that, on April 22, 1997, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a request under its blanket certificate in Docket No. CP82–407–000 and §§ 157.205, 157.212, and 157.216(b) of the Commission's regulations, for authorization to: (1) Replace and relocate its Park City delivery point, in Barren County, Kentucky (at an estimated cost of $55,000); and (2) abandon its 1,827-foot, Park City 2-inch Line and existing delivery point (i.e., the existing 2-inch positive displacement meter facility) by conveyance to Western Kentucky Gas Company (WKG), all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Texas Gas states that the Park City delivery point was originally constructed by Kentucky Natural Gas Corporation, a predecessor of Texas Gas, and that it was certificated in 1943 in Docket No. G–376.

Texas Gas proposes to relocate the Park City delivery point from the Park City 2-inch Line to the side-valve location on its Bowling Green-Munfordville 8-inch Line, at approximately mile 24+4081, where the Park City 2-inch Line originates. Texas Gas proposes to install, own, and operate a new 2-inch skid-mounted orifice meter facility, electronic flow measurement, telemetry, and related facilities on a lot acquired by Texas Gas. Texas Gas states that it is replacing and relocating the Park City delivery point's meter facility to upgrade the measurement facilities and relocate the meter to a site that is more convenient for operation and maintenance of the station.

Texas Gas states that its Park City delivery point is used to serve customers of WKG, in the Park City, Kentucky area. Texas Gas also states that, because the Park City delivery point is merely being relocated, service to the customers of WKG will not be affected by the proposed abandonment of the existing delivery point. Texas Gas further states that its proposal will not significantly affect its peak-day and annual deliveries, that WKG has not requested any increase in contract quantity, and that service to WKG through the relocated Park City delivery point can be accomplished without detriment to Texas Gas' other customers.

Comment date: June 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP97–371–000]

Take notice that on April 22, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–371–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to construct and operate new sales tap facilities and to abandon sales tap facilities, located in Mercer County, Pennsylvania, under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to relocate an existing sales tap, designated as Station T–No. 980, utilized for transportation service rendered to National Fuel Gas Distribution Corporation, located in Mercer County, Pennsylvania. National states the new station will be constructed at a more accessible location approximately fifty feet west of the existing station, which will be removed in its entirety. National declares the anticipated flow at the new station, also designated Station T–980, is 360,000 SCF per day with a maximum capacity estimated to be 565,000 SCF per day.

National states the cost of construction at this new station is estimated to be $19,600.

Comment date: June 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP97–379–000]

Take notice that on April 24, 1997, Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, Texas 77056–5310, filed a request under its blanket certificate in Docket No. CP83–83–000 and §§ 157.205 and 157.211 of the Commission's regulations, for authorization to construct, own, and operate a new delivery point (i.e., tap) 22 miles upstream of Panhandle's Hansford Compressor Station, near PanEnergy Field Services, Inc.'s (PanEnergy) Holt Compressor Station, for the purpose of delivering up to 480 Mcfd of natural gas to PanEnergy as compressor fuel for the Holt Compressor Station, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Both compressor stations are located in Hansford County, Texas. In response to PanEnergy's request for the new delivery point, Panhandle proposes to construct a new 2-inch hot tap, approximately 20 feet of 2-inch pipe, and a 2-inch check valve to enable it to make deliveries to PanEnergy, from Panhandle's existing Line No. 41–01–002–0200. According to Panhandle, the new delivery tap will feed the Holt Compressor Station via a new delivery meter station and line that PanEnergy will construct. Panhandle states that PanEnergy plans to construct a 2-inch delivery meter, a 6-inch delivery meter, and approximately 50 feet of 2-inch, non-jurisdictional pipeline downstream of the new delivery meter at the Holt Compressor site. Panhandle adds that PanEnergy will construct all other facilities, including any required pressure regulators. Panhandle further states that it will own and operate the hot tap, meter stations and all piping

and equipment upstream of the delivery meter insulating flange, and that PanEnergy will own the insulating flanges, all facilities upstream of the receipt meter insulating flange, and all facilities downstream of the delivery meter insulating flange.

Panhandle estimates the cost to construct the proposed facilities at approximately $6,000. Panhandle also states that PanEnergy will reimburse Panhandle for 100 percent of the costs and expenses that Panhandle would otherwise incur for the proposed construction.

Comment date: June 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP97–385–000]

Take notice that on April 25, 1997, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP97–385–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a tap connection, measuring, and appurtenant facilities for the delivery of transportation gas to Walsh Production, Inc. (Walsh) in Weld County, Colorado, authorized in blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to install a tap connection, measuring, and appurtenant facilities in the Northwest Quarter (NW/4) of Section 33, Township 8 North, Range 58 West, Weld County, Colorado, to deliver transportation gas to Walsh. The gas would be used to repressure a depleted oil reservoir to produce any oil remaining in the reservoir.

The Cost to construct these facilities is estimated to be approximately $67,000 which would be fully reimbursed by Walsh. Walsh would own, and Williams would operate and maintain the facilities. Walsh estimates the annual delivered volume would be approximately 1,136,000 Dth with a peak day volume of 3,111 Dth.

Comment date: June 13, 1997, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First 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 Section 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. 97–11865 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Proposed Firm Power Service Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge adjustment.

SUMMARY: The Western Area Power Administration (Western) is announcing the Fiscal Year 1997 annual rate adjustment process for Fiscal Year 1998 Rates under Rate Order WAPA–70 for firm power service for the Boulder Canyon Project (BCP). The annual rate adjustments are a requirement of the ratesetting methodology of WAPA–70 which was approved on a final basis by the Federal Energy Regulatory Commission (FERC) on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. The power repayment spreadsheet study indicates the proposed Base Charge herein for BCP firm power service is necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The proposed Base Charge for firm power service is expected to become effective October 1, 1997.

DATES: Submit comments on or before August 5, 1997. The forums dates are:

1. Public information forum, May 15, 1997, 9:30 a.m.

2. Public comment forum, June 12, 1997, 9:30 a.m.

ADDRESSES: Written comments should be sent to Western Area Power Administration, Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona 85009. The public forums at the Desert Southwest Regional Office will be held in Conference rooms 2 and 3.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Regional Manager, (602) 352–2453 or Mr. Anthony H. Montoya, Assistant Regional Manager, Power Marketing, (602) 352–2789.

SUPPLEMENTARY INFORMATION: The proposed Base Charge for BCP firm power is based on an Annual Revenue Requirement of $43,241,130. The Base Charge consists of an Energy Dollar of $22,408,332 and a Capacity Dollar of $20,832,797. The Forecast Energy Rate will be 4.9785 mills/kilowatthour (mills/kWh); Forecast Capacity Rate will be $0.8898 per kilowatt per month ($/kW-mo).

The existing BCP firm power Base Charge is based on an Annual Revenue

Requirement of $44,437,488, consisting of an Energy Dollar of $22,976,824 and a Capacity Dollar of $21,460,664. The existing BCP Forecast energy rate is 5.28 mills/kWh and forecast capacity rate is $0.92/kW-mo.

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend proposed charges/rates for approval on a final basis by the Deputy Secretary of DOE pursuant to Rate Order No. WAPA–70.

The power rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project, Final Rule (10 CFR part 904) published in the **Federal Register** at 50 FR 37837 on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 dated September 20, 1979).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to FERC.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for energy and capacity are and will be made available for inspection and copying at Western's Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona 85009.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation:

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Dated: April 29, 1997.

J. M. Shafer,

Administrator

[FR Doc. 97–11849 Filed 5–6–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5822–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA's WasteWi$e Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements Under EPA's WasteWi$e Program; OMB Control No. 2050–0139. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1698.03.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWi$e Program (OMB Control No. 2050–0139; EPA ICR No. 1698.02) expiring May 31, 1997. This is a request for extension of a currently approved collection.

Abstract: EPA's voluntary WasteWi$e program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled products. WasteWi$e participants include Partners, which commit to implementing waste reduction activities of choice, and Endorsers, which promote the WasteWi$e program and waste reduction to their members. Endorsers, which are typically trade associations or other membership-based organizations, submit only a one-page form, the Endorser Registration Form. This form identifies the organization, principal contact, and the activities to which the Endorser commits. Partners fill out three forms as follows. The Partner Regisration Form identifies the organizations and the facilities that will participate in WasteWi$e, and requires the signature of a senior official that can commit the organization to the program. Each Partner develops its own three-year waste reduction goals and submits a one-page Goals Identification Form to EPA once during a three-year commitment. Partners also report annually on the progress made toward achieving these goals in the Annual Reporting Form, estimating amounts of waste prevented and recyclables collected, and describing buy-recycled activities.

The WasteWi$e program uses the submitted information to (1) identify and recognize outstanding waste reduction achievements by individual members, (2) compile aggregate results that indicate overall accomplishments of WasteWi$e Partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was

published on January 13, 1997 (62 FR 1751); 2 comments were received.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per Endorser (one-time burden); 100.75 hours per Partner in the first year; and 55.25 hours per Partner each subsequent year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those businesses, institutions, and government agencies that sign up to participate in EPA's WasteWi$e program.

Estimated Number of Respondents: 694 respondents annually.

Frequency of Response: On Occasion and Annually.

Estimated Total Annual Hour Burden: 40,067 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1698.03 and OMB Control No. 2050–0139 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 1, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–11906 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5822–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Proposal Guidelines for the Competition for the 1997 National Brownfields Cleanup Revolving Loan Fund Demonstration Pilots

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposal Deadlines and Guidelines.

SUMMARY: The Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, is designed to empower states, local governments, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. As part of this Initiative, EPA will award Brownfields Cleanup Revolving Loan Fund (BCRLF) Demonstration Pilots to states, cities, towns, counties, territories, and Indian tribes to test brownfields cleanup revolving loan fund models that direct special efforts toward facilitating coordinated public and private efforts at the federal, state, and local levels.

To date, the Agency has funded 78 Brownfields Assessment Demonstration Pilots. The brownfields assessment pilots (each funded up to $200,000 over two years) test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated environmental cleanup and redevelopment efforts at the federal, state, and local levels. These brownfields assessment pilot are being used to bring together community groups, investors, lenders, developers, and other affected parties to address the issue of assessing sites contaminated with hazardous substances and preparing them for appropriate, productive use. The pilots serve as vehicles to explore a series of models for states and localities struggling with such efforts. Of those pilots, 39 are National Pilots selected under criteria developed by EPA Headquarters and 39 are Regional Pilots selected under EPA Regional criteria. (In 1997, EPA will announce 25 new National Pilots and at least 5 new Regional Pilots.)

For the 1997 fiscal year (FY97), only entities that have been awarded National or Regional brownfields assessment pilots prior to October 1995 will be eligible to apply to EPA's BCRLF demonstration pilot program. Therefore, up to 29 BCRLF pilots may be awarded in FY97. FY97 BCRLF Pilots will be selected by the National program. Unlike brownfields assessment pilots, Regional offices will not independently identify and select BCRLF pilots. The 29 eligible pilots are listed below (sorted by EPA Region):

EPA Region 1: BRIDGEPORT, CT; BOSTON, MA

EPA Region 2: TRENTON, NJ; BUFFALO, NY; ROCHESTER, NY

EPA Region 3: BALTIMORE, MD; PHILADELPHIA, PA; PITTSBURGH, PA; CAPE CHARLES, VA; RICHMOND, VA

EPA Region 4: BIRMINGHAM, AL; LOUISVILLE, KY; KNOXVILLE, TN

EPA Region 5: STATE OF ILLINOIS; WEST CENTRAL MUNICIPAL CONFERENCE, IL; STATE OF INDIANA; INDIANAPOLIS, IN; DETROIT, MI; STATE OF MINNESOTA; CUYAHOGA COUNTY (Cleveland), OH

EPA Region 6: NEW ORLEANS, LA; DALLAS, TX; LAREDO, TX

EPA Region 7: ST. LOUIS, MO

EPA Region 8: SAND CREEK CORRIDOR, CO; WEST JORDAN, UT

EPA Region 9: SACRAMENTO, CA;

EPA Region 10: OREGON MILLS, OR; DUWAMISH, WA

DATES: This action is effective immediately and expires on June 9, 1997. All proposals must be postmarked or sent to EPA via registered or tracked mail by the expiration date cited above.

ADDRESSES: Proposal guidelines can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

Guidelines may also be obtained by writing to: U.S. EPA—Brownfields Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

Copies of the Booklet are available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION:

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller

General of the General Accounting Office prior to publication of the action in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2).

The BCRLF pilots will be selected through an evaluation process. Eligible entities must demonstrate: (1) an ability to manage a revolving loan fund and environmental cleanups; (2) a need for cleanup funds; (3) commitment to creative leveraging of EPA funds with public-private partnerships and in-kind services; and (4) a clear plan for sustaining the environmental protection and related economic development activities initiated through the BCRLF program. *The 29 eligible entities must meet EPA's threshold and evaluation criteria. There is no guarantee of an award.* Also, the size of the awards may vary (for example, from $50,000 to $350,000), depending on the proposal's responses to the evaluation criteria.

The BCRLF Pilots are intended to support self-sustaining efforts by states, local governments, and Indian tribes to clean up brownfields. In particular, these pilots will test revolving loan fund models that facilitate coordinated public and private cleanup efforts. A revolving loan fund is a variant of a bond bank, in which a sponsoring entity (in this case, EPA) provides capitalization funds to a managing entity (for example, a municipality) that are used to make loans for authorized purposes (brownfields cleanups). A revolving loan fund charges interest on the loans, generally at a low interest rate. This fund is termed revolving because it uses loan repayments (principal, plus interest) to make new loans for the same authorized purposes.

From the BCRLF Pilot funds, states, political subdivisions, and Indian tribes may provide loans, but not grants, to public and private parties (for example, local political subdivisions and community development organizations) for the purposes of cleaning up brownfields sites that already have been assessed for contamination. Loan repayments provide a continuing source of capital for states, political subdivisions, and Indian tribes to direct and facilitate brownfields site cleanups by providing additional loans to other eligible recipients for brownfields site cleanup. The following definitions will be used throughout these proposal guidelines:

- A *Proposer* is the state, political subdivision of a state (for example, city, town, county), territory, or Indian tribe that is going to submit or has submitted a proposal for a BCRLF Demonstration Pilot with EPA.
- A *Proposal* is the document submitted to EPA that provides responses to the criteria described below. If the proposal meets the criteria and the proposer is selected by EPA to receive BCRLF Pilot funding, the proposer will be requested to prepare a formal *application* for a cooperative agreement.
- A *Cooperative Agreement* is the document negotiated between EPA and those proposers that EPA has selected as candidates to receive BCRLF Pilot funding. The cooperative agreement will award federal funds and outline the specific and standard terms and conditions to be met by the recipient of the funds.
- A *Cooperative Agreement Recipient* is the entity that enters into the cooperative agreement with EPA, will receive the BCRLF Pilot funding from EPA, and will be responsible for managing the funds, ensuring proper environmental cleanups, and complying with applicable laws and regulations.

—The *Fund Manager* is the *cooperative agreement recipient* or its legally designated representative who will be responsible for ensuring that the BCRLF is managed in conformance with the cooperative agreement, applicable laws and regulations, and prudent cleanup and lending practices.

—The *Lead Agency* is the *cooperative agreement recipient* or its legally designated representative who will be responsible for ensuring that environmental cleanups conducted using BCRLF Pilot funds are conducted in conformance with the cooperative agreement, and federal and state requirements.

—The *Brownfields Site Manager* is the person appointed by the *cooperative agreement recipient* or lead agency to oversee cleanups at specific sites.

- The *Borrower* is the public or private entity that will receive and repay loans from the BCRLF under terms and conditions negotiated with the cooperative agreement recipient.

Legal and Program Guidelines for the Proposals

The BCRLF demonstration pilot program is funded under § 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). BCRLF pilot funds must be directed toward environmental response activities. BCRLF funds may not be used to pay for non-environmental response redevelopment activities (for example, construction of a new facility or marketing of property). Use of BCRLF funds must be consistent with CERCLA, and all CERCLA restrictions on use of funding also apply to BCRLF pilot cooperative agreement recipients.

States, political subdivisions (including, cities, towns, and counties), territories, and Indian tribes are eligible cooperative agreement recipients. Proposals from coalitions among the 29 entities eligible in FY97 are permitted to apply, but a single eligible entity must be identified as the legal recipient. Cooperative agreement funds will be awarded only to an eligible recipient, as described above.

The cooperative agreement recipient must act as, or designate, the "lead agency." In turn, the "lead agency" must officially designate a qualified environmental specialist as the "brownfields site manager" who can ensure that any cleanup activities performed by the borrower are consistent with federal and state requirements. The BCRLF pilot proposals must conform to the following guidelines:

Eligible Brownfields Sites

- Use of the BCRLF pilot funds are limited to brownfields sites that have been determined to have an actual release or substantial threat of a release of a hazardous substance which presents a threat to public health or welfare, or the environment. Funds may also be used at sites with a release or substantial threat of release of a pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. These funds may not be used to pay for non-environmental redevelopment activities (for example, new construction or property marketing).
- However, BCRLF pilot funds may not be used for activities at any sites: (1) listed (or proposed for listing) on the National Priorities List; (2) at which a removal action must be taken by federal or state agencies within six months; or (3) where a federal or state agency is planning or conducting a response or enforcement action.
- BCRLF pilot funds may be loaned for activities at sites that are: (1) currently publicly owned; (2) publicly owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; (3) privately owned, with clear means of recouping BCRLF pilot expenditures (for example, through a guarantee by the owner's or developer's security interest or through a lien on real property); or (4) undergoing purchase by a new party who meets the definition of prospective purchaser.

The Borrower

• A party which is determined to be a generator or transporter of contamination at a brownfields site(s) is ineligible for a BCRLF pilot loan for that same site.

• The cooperative agreement recipient's lead agency may initially find that an owner/operator of a brownfields site(s) is an eligible borrower for a BCRLF pilot loan for that same site, only if: the lead agency can determine that an owner/operator would fall under a statutory exemption; or that EPA would use its enforcement discretion and not pursue the party in question under CERCLA, as described by EPA guidance (see list in Appendix B). However, the initial findings made by the lead agency by no means limit the enforcement discretion or authority of the federal or state government. The lead agency must maintain documentation demonstrating the eligibility of the owner/operator.

Pre-Cleanup

• BCRLF pilot funds may not be used to conduct environmental response activities preliminary to cleanup, such as site assessment, site identification, and site characterization. These funds have been designated by EPA's Administrator for cleanup-related activities only. The fund manager may, however, negotiate with the borrower a limit of up to 10% of the total loan to cover both administrative and cleanup response planning costs.

• The cooperative agreement recipient must ensure the pre-cleanup activities and cleanup planning conducted by the potential borrower meet federal, state, and local requirements. The authorized brownfields site manager must review and concur with the plans submitted by the borrower before the fund manager issues the loan.

• The cooperative agreement recipient's lead agency must review the current site conditions and site evaluation information that is required to be provided by the borrower to determine if the planned cleanup action is appropriate.

—The site evaluation information must include pertinent facts about the discharge or release, such as: its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; the potential impact on natural resources and property that may be affected; priorities for protecting human health and welfare and the environment; analysis of alternative cleanup options; and appropriate cost documentation.

• The cooperative agreement recipient must ensure adequate documentation of the basis for the selection of the cleanup action (including site evaluation information) and the decision to authorize cleanup activities (including the decision to issue a loan). The lead agency and the fund manager shall compile and maintain the documentation including the data, analyses of site information, and other documents that provide the basis for cleanup levels and activities.

Cleanup Activities

• The cooperative agreement recipient must ensure that activities supported by BCRLF pilot funds are carried out consistent with federal and state requirements. The brownfields site manager must monitor the borrower's site activities for compliance with federal and state environmental requirements. The brownfields site manager must monitor the borrower's cleanup activities to determine that the cleanup fully addresses the contamination. If the brownfields site manager determines that the borrower's planned cleanup action is not sufficient and the site requires additional action, the lead agency shall ensure an orderly transition to the additional activities that ensure protection of human health and the environment.

• The lead agency must determine that a potential borrower's proposed activities are consistent with removal activities authorized by CERCLA. The lead agency must determine, on a site-by-site basis, that a removal action is authorized by CERCLA. "Removal" is defined in CERCLA § 101(23); and descriptions of removal actions and their requirements are included in 40 C.F.R. § 300.415.

—The lead agency must set community relations standards that ensure that the borrower's activities meet CERCLA public participation requirements. This includes, among other things, required public notice periods, availability of documents to the public, and the designation of a spokesperson who shall inform the community of actions taken, respond to inquiries, and provide information concerning the activities.

—The lead agency must ensure that the borrower meets all federal and state requirements for worker health and safety at the brownfields cleanup site(s).

—If the release of the hazardous substance, pollutant or contaminant involves damage to natural resources as defined under CERCLA, the lead agency must ensure that the removal action plan coordinates with the activities of the designated federal trustee agency.

• The fund manager may allow the borrower to use BCRLF pilot loan funds for site monitoring activities that are reasonable and necessary during the cleanup process. Funds may be used to determine the effectiveness of the cleanup, but may not be used for operation and maintenance. BCRLF pilot funds may not be used for monitoring and data collection necessary to apply for, or comply with, environmental permits under other State and federal laws, unless such a permit is required as a component of the cleanup action.

Other Restrictions

• The cooperative agreement recipient may use BCRLF pilot funds for the lead agency's or fund manager's administrative and legal costs up to 5% of the total award, to be determined during cooperative agreement application negotiations with EPA. Allowable costs may include loan processing, professional services, audit, legal fees and state program fees.

• BCRLF pilot funds may not be used for job training. Support for job training activities may be available through the Hazardous Material Training and Research Institute, EPA programs, other federal agency programs, and state and local programs.

• BCRLF pilot funds may not be used to support "lobbying" efforts of the cooperative agreement recipient (for example, lobbying members of Congress or State legislatures, or lobbying for other federal grants, cooperative agreements, or contracts).

• BCRLF pilot funds may not be used at sites contaminated by *petroleum products* except to address a co-mingled hazardous substance, pollutant, or contaminant (for example, used oil). CERCLA expressly excludes petroleum from the definition of hazardous substances.

• Funding cannot be used to cleanup a naturally occurring substance, products that are part of the structure of residential buildings or business or community structures (for example, lead-based paint contamination or asbestos), or public or private drinking water supplies that have deteriorated through ordinary use, except as

determined, in consultation with EPA, on a site-by-site basis consistent with CERCLA § 104(A) (3) and (4).

- The cooperative agreement recipient can not use BCRLF pilot funds to match any other federal funds without specific statutory authority. (However, the borrower may use BCRLF pilot funds to match other federal funds.)
- The cooperative agreements are governed by EPA's general grant regulations (40 CFR Part 31) and regulations for cooperative agreements under CERCLA § 104(d) (40 CFR Part 35, Subpart C).

Evaluation of the Proposals

Evaluation Process

To ensure a fair evaluation process, EPA will convene a FY97 BCRLF pilot evaluation panel consisting of EPA Regional and Headquarters staff, Economic Development Administration (EDA) staff and other federal agency representatives. The evaluation panel will assess how well the proposals meet the criteria outlined below. The evaluation panel's evaluations will be presented to EPA senior management for final selection. The evaluations will include recommendations for the number and size of the awards.

Proposals must be clear and decisive, strictly follow the criteria, and provide sufficient detail for the panels to compare the merits of each and decide which proposal best supports the intent of the pilot program. Vague descriptions and unnecessary redundancy may reduce the chance of a favorable rating. Proposers are encouraged to contact and, if possible, meet with EPA Brownfields Coordinators (see Appendix C).

Cooperative Agreement Award Process

Upon determination of having been selected, proposers will receive a confirmation letter from EPA Headquarters. Since the cooperative agreements are to be awarded by the EPA Regional offices, at the time the selected proposers are notified, appropriate EPA Regional Brownfields Coordinators and Regional Grants Specialists also will be informed. The proposer then will be contacted by the Regional office and asked to submit a formal cooperative agreement application package. The information in the proposal submitted to EPA Headquarters will form a basis for the cooperative agreement application. However, the cooperative agreement application will require more detailed information on specific products, schedule, and budgets. The cooperative agreement application package will include: the standard application and budget forms; a formal work plan that provides a detailed description of the work to be performed, including a schedule, milestones, products, and budget backup information; information related to community relations, health and safety, and quality assurance plans; and the required certification forms. When the applicant is a political subdivision, an additional letter of support will be required from the appropriate state or tribe as an attachment to the cooperative agreement. In addition, as soon as the proposer is notified of having been selected, they will be asked to contact their State Intergovernmental Review office so that the required intergovernmental review process may begin immediately. The EPA Regional Brownfields Coordinator and Regional Grants Specialist will work closely with the applicant to process and finalize the cooperative agreement package.

Proposers that are not selected will be informed in writing. A proposer may choose to revise the proposal for submittal by a deadline announced by EPA at a later date.

Criteria for the Brownfields Cleanup Revolving Loan Fund Proposal

The proposal evaluation panels will review the proposals carefully and assess each response based on how well it addresses the evaluation criteria, briefly outlined below:

Threshold Criteria (Section A)

A. Ability to Manage a Revolving Loan Fund and Environmental Cleanups

Proposers must meet the threshold criterion—demonstrating an ability to manage a revolving loan fund and environmental cleanups—to be selected for a BCRLF Demonstration Pilot.

A.1. Demonstrate your legal authority to manage a revolving loan fund and environmental cleanups (or demonstrate a firm plan to get authority if provided with funding).

A.2. Demonstrate that you have an effective institutional structure in place or planned. Specifically describe the roles of and relationships between: (1) the potential cooperative agreement recipient; (2) the proposed lead agency; (3) the proposed fund manager; and (4) the brownfields site manager.

A.3. Describe your proposed BCRLF Pilot Financial Plan.

Evaluation Criteria (Sections B–E)

Those proposers that meet the threshold criterion will be evaluated based on their responses to three evaluation criteria: (1) demonstration of need; (2) commitment to creative leveraging of EPA funds; (3) benefits of BCRLF pilot loans to the local community criteria; and (4) long-term benefits and sustainability.

Your response to the following criteria will be the primary basis on which EPA determines the size of award. EPA's evaluation panel will review the proposals carefully and assess each response based on how well it addresses each criterion.

B. Evaluation Criteria: Demonstration of Need

B.1. Problem Statement and Unique Needs of the Community
B.2. Description of Potential Borrowers and Property
B.3. Ability to Finance Cleanups

C. Evaluation Criteria: Commitment to Creative Leveraging of EPA Funds

C.1. Ability to Attract and Support Other Financing
C.2. Cash and In-Kind Contributions
C.3. Efficiency of Planned Administrative Structure

D. Evaluation Criteria: Benefits of BCRLF Loans to the Local Community

D.1. Announcement and Notification of BCRLF Fund Availability
D.2. Community Involvement in Future Land Reuse
D.3. Contribution to Community Economic Development Plans
D.4. Environmental Justice Benefits
D.5 Projected Sustainable Benefits

E. Evaluation Criteria: Long-Term Benefits and Sustainability

E.1. National Replicability
E.2. Measures of Success

Dated: April 22, 1997.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 97–11905 Filed 5–6–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181045; FRL 5714–4]

Benomyl; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the North

Dakota Department of Agriculture and the Minnesota Department of Agriculture (hereafter referred to as the "Applicants") to use the pesticide benomyl (CAS 17804–35–2) (formulated as "Benlate Fungicide") for the control of *Sclerotinia* stem rot in canola. A maximum of 60,000 acres in North Dakota, and a maximum of 10,500 acres in Minnesota could be treated. The Applicants propose the use of a pesticide which contains an active ingredient which has been the subject of a Special Review, and is intended for a use that could pose similar risks to the risks posed by the uses that were the subject of the Special Review. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before May 22, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181045," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as 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 provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location, telephone number and e-mail: Sixth floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–6418; e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of benomyl on canola to control the *Sclerotinia* stem rot. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

The Applicants state that the last 4 years have been favorable to the buildup of *Sclerotinia* in the soil, and that experience with other crops indicates the *Sclerotinia* levels are sufficiently high to place the canola crop in a highly vulnerable position if a rainy period occurs when the crop is flowering. The Applicants state that canola growers will likely suffer severe economic losses since there are no registered alternative pesticides available and the fungus has become sufficiently widespread that crop rotation will be of limited effectiveness in the major canola producing areas.

The Applicants propose to make a single aerial application of benomyl at a rate of 0.5 lbs. active ingredient (a.i.) per acre during the 20 to 30 percent bloom stage. The need for application of the fungicide will be determined by the weather in the weeks prior to bloom and the yield potential. The proposed use is for up to 60,000 acres of canola in North Dakota, and 10,500 acres of canola in Minnesota. Therefore, use under these exemptions could potentially amount to a maximum total of 35,250 lbs. of the active ingredient, benomyl (30,000 in North Dakota and 5,250 in Minnesota). Emergency exemptions for this use were granted to North Dakota in 1989 thru 1992.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the use of a pesticide which contains an active ingredient which has been the subject of a Special Review, and is intended for a use that could pose similar risks to the risks posed by the uses that were the subject of the Special Review. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181045] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181045]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the North Dakota Department of Agriculture and the Minnesota Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: April 23, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–11634 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400110; FRL–5598–8]

Ethylene Glycol; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing the results of its technical review and evaluation of a petition to delete ethylene glycol from the list of toxic chemicals subject to the reporting requirements under section 313 of the Emergency Planning and

Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Since the petition to delete ethylene glycol was withdrawn on October 28, 1996, there is no need for final action by the Agency. However, the Agency has decided to issue its findings in order to make publicly available the technical review and subsequent scientific conclusion.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882 or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877, or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Ethylene glycol was included on the initial EPCRA section 313 list of toxic chemicals. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61432, November 30, 1994) (FRL–4922–2).

II. Description of the Petition

On March 21, 1994, Bonded Products, Inc. petitioned the Agency to delist ethylene glycol from the list of toxic chemicals subject to reporting under section 313 of EPCRA and section 6607 of PPA. The Bonded Products petition was based on the contention that: ethylene glycol is biodegradable, rapidly loses its toxicity and, therefore, is not expected to cause adverse environmental, or acute or chronic health effects; and, that releases from the consumer use of ethylene glycol are likely to be significantly higher compared to releases from manufacturing facilities. The petitioners argued that ethylene glycol does not meet any of the EPCRA section 313(d)(2) criteria for listing. EPA staff reviewed the petition based on information and data that the Agency retrieved from its own review of the literature, as well as information supplied by other interested parties. On October 28, 1996, Bonded Products withdrew their petition.

The review of Bonded Products, Inc.'s petition was complete prior to their request for withdrawal, and the Agency has determined that it is in the public's best interest and clearly in keeping with the Community-Right-to-Know ethic to provide a summary of the chemical review and conclusion. Bonded Products, Inc. or any other party may re-petition the Agency on ethylene glycol at any time. The Agency remains open to receiving and reviewing new information and re-evaluating its position on this chemical as it relates to section 313 of EPCRA.

III. Technical Review of Ethylene Glycol

The technical review of the petition to delete ethylene glycol from the EPCRA section 313 list of toxic chemicals included an analysis of the relevant chemistry, metabolism and absorption, toxicity, and exposure data available to the Agency for ethylene glycol. Summaries of the analysis of each of these areas is provided in Units III.A. through III.F. of this preamble, and a more complete discussion of this information can be found in the EPA documents prepared for this assessment (Refs. 1-14), which have been placed in the public docket for this petition (Docket OPPTS-400110).

A. Chemistry, Use, and Production Profile

Ethylene glycol is a colorless, odorless, syrupy liquid with a sweet taste. It has a relatively high boiling point (197.6 °C), flash point (116 °C), autoignition temperature (412.93 °C), and is relatively non-volatile at room temperature (Ref. 1). Ethylene glycol absorbs water and can take up twice its weight of water at 100 percent relative humidity. Additionally, the substance reduces the freezing point of water and is widely used as an antifreeze and deicer.

Ethylene glycol is generally produced by the noncatalytic, liquid phase hydration of ethylene oxide (Ref. 1). Diethylene glycol, triethylene glycol and tetraethylene glycol are co-products. Other processes have been patented such as: (1) oxidation of ethylene in an aqueous medium using an iron-copper catalyst; and (2) rhodium-catalyzed production of ethylene glycol from synthesis gas (a mixture of carbon monoxide and hydrogen from coal gasification) instead of ethylene.

There were 2.3 billion kilograms of ethylene glycol produced in 1992 and production has been fairly steady since the early 1980's (Ref. 2). Domestic consumption was 2.1 billion kilograms. The major end use of ethylene glycol is in the production of polyethylene terephthalate (PET), with 30 percent used for fibers and 22 percent used for films, bottles, and other molded plastics, laminates, and castings (Ref. 2). An additional 38 percent of ethylene glycol production is used in antifreeze application, such as the principle ingredient of all-weather automobile cooling system fluids, deicing solutions for aircraft and pavement, and in fire extinguishers and sprinkler systems. The remaining 10 percent of demand is in miscellaneous applications such as a diluent and coupler in cutting fluids, as a solvent or coupling agent for stains, dyes, resins, inks, soluble oils, and hydraulic fluids. It is also used as a component in the manufacture of polyester laminating resins and other plastics.

B. Metabolism and Absorption

Ethylene glycol itself appears to have relatively low toxicity, but it is oxidized to a variety of more toxic metabolites such as glycolaldehyde, glycolic acid, glyoxalic acid and oxalic acid (Ref. 6). In general, the accumulation of these acids leads to acidosis (the state that is characterized by actual or relative decrease of alkali in body fluids in relation to the acid content). Present information suggests that glycolic acid is the major toxic metabolite contributing to metabolic acidosis, which is the underlying cause of systemic toxicity following exposure to ethylene glycol.

Based on a comparison of metabolism studies, ethylene glycol appears to be less well absorbed following dermal application than following administration via oral gavage (Ref. 10). In addition, even when an ethylene glycol aerosol is generated to maximize the amount available for inhalation, the body burden remains fairly low. In the study by Frantz et al. (Ref. 15), ethylene glycol and its metabolites (glycolic acid and oxalic acid) were excreted in the urine of animals dosed both orally and dermally. In contrast, the study by Marshall and Cheng (Ref. 16) showed that after inhalation exposure to ^{14}C-labeled ethylene glycol, the only ^{14}C-containing material identified in the plasma and urine (both for the aerosol and vapor) was unmetabolized ethylene glycol.

C. Human Toxicity Evaluation

The inherent toxicity of ethylene glycol is low relative to several of its metabolites. The evidence for this comes from clinical studies and laboratory investigations (Ref. 4). Ethanol is a competitive inhibitor of alcohol dehydrogenase (ADH), the first enzyme in the ethylene glycol metabolic pathway, and is very effective in treating animal and human ethylene glycol poisonings. If treatment is started early enough, the metabolic acidosis and renal failure discussed below can be prevented.

1. *Inhalation toxicity.* Two inhalation developmental toxicity studies have been conducted by the same group (Refs. 17 and 18). In a whole body exposure study (Ref. 17), mice and rats were exposed to ethylene glycol aerosols of 150, 1,000 or 2,500 milligrams per cubic meter (mg/m^3) for 6 hours/day on gestational days 6 through 15. The actual measured concentrations were 119, 888, or 2,090 mg/m^3. In rats, maternal toxicity occurred only at the highest concentration and was indicated by a significant increase in absolute and relative liver weight. In rats, evidence of prenatal developmental toxicity (reduced ossification in the humerus, zygomatic arch, and the metatarsals and proximal phalanges of the hindlimb) was observed at the two higher concentrations. In mice, incidences of prenatal developmental toxicity were increased at the two highest concentrations and included malformations in the head (exencephaly), face (cleft palate, foreshortened and abnormal face, and abnormal facial bones), and skeleton (vertebral fusions, and fused, forked, and missing ribs). The No Observed Adverse Effect Level (NOAEL) for maternal toxicity in rats was 888 mg/m^3 and in mice was 119 mg/m^3. The NOAEL for developmental toxicity in rats was 119 mg/m^3 and in mice was below this concentration.

A major confounding factor in this study was the deposition of a detectable quantity of ethylene glycol upon the animals during exposure. The animals could have received the chemical via the oral route by preening or by dermal absorption, although much less would be taken in via the skin. Analysis of the chemical on the fur of rats and mice after the exposure period at the highest concentration indicated that much of the chemical dose (65-95 percent) was potentially derived from ingestion after grooming.

To address the potential confounding factor of multiple exposure routes cited above, a further study used nose-only exposure of mice to 500, 1,000, and 2,500 mg/m^3 of ethylene glycol aerosol for 6 hours/day on gestational days 6 through 15 (Ref. 18). Results from the positive control (whole body exposure to 2,100 mg/m^3) confirmed the results from the previous study. In the nose-only portion, the two higher concentrations produced increased kidney weights in the dams. At the highest concentration, fetal weights were reduced and fetal skeletal variations and one fetal skeletal malformation (fused ribs) were increased. The developmental NOAEL for nose-only inhalation exposure was 1,000 mg/m^3; the maternal NOAEL was 500 mg/m^3. The developmental NOAEL in this study was at least 10 times the whole body value since a NOAEL was not established in the previous whole body inhalation study but was less than 119 mg/m^3. The maternal NOAEL was approximately five times the previous value. This nose-only exposure study indicates that most of the adverse effects seen in the whole-body exposure study were due to systemic exposure from noninhalation routes; however, as discussed above, adverse effects were seen in the nose-only exposure study.

The toxicity data strongly indicate that ethylene glycol is much less toxic than its metabolites; however, it is not known if ethylene glycol might act directly on embryos. The available literature does not provide adequate data to allow definitive conclusions concerning ethylene glycol's toxicity to embryos (Ref. 4).

2. *Oral toxicity.* Ethylene glycol is expected to be absorbed through the skin and from the lung and the gastrointestinal tract. After absorption, it is expected to enzymatically oxidize to oxalic acid, glycolic acid, glycolaldehyde and carbon dioxide. The aldehyde metabolites are believed to be responsible for neurotoxicity and the oxalic acid metabolites for renal toxicity (Ref. 8).

a. *Renal toxicity.* The oral reference dose (RfD) for ethylene glycol as established by the Agency's RfD/RfC (reference concentration) working group is 2 milligrams per kilogram per day (mg/kg/day). An RfD reflects the Agency's estimate of a level of daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (Ref. 19). The RfD for ethylene glycol is based on a feeding study by DePass et al. (1986, as cited in EPA's Integrated Risk Information System (IRIS), 1994; Ref. 20) in which the critical effect was kidney toxicity. Groups of male and female rats (30/sex/group) and male and female mice (20/sex/group) were fed diets containing ethylene glycol at doses of 0, 40, 200, or 1,000 mg/kg/day for 2 years. Urinary calcium oxalate crystals and increased kidney weight were seen in all high-dose rats. Histopathologic changes in high-dose male rats included tubular cell hyperplasia, tubular dilation, peritubular nephritis, parathyroid hyperplasia, and generalized soft tissue mineralization. No adverse effects were seen in rats of either sex at the mid or the low doses. There were no adverse effects seen in mice of either sex at any dose tested. The Lowest Observed Adverse Effect Level (LOAEL) was determined to be 1,000 mg/kg/day and the NOAEL was 200 mg/kg/day. The RfD was set with an uncertainty factor of 100, 10 for interspecies extrapolation and 10 for differences in human sensitivity. Confidence in the study, the uncertainty factor and the RfD was high.

b. *Developmental/reproductive toxicity.* IRIS includes a review of several developmental reproductive studies with LOAELs at or near that seen in the DePass study which was

used to set the oral RfD. These studies were not chosen as the basis for the RfD since the LOAEL from the DePass study was somewhat lower and the RfD was deemed protective of developmental effects. In a 3-generation reproduction study, Lamb, as cited in IRIS (Ref. 20), treated rats with 0, 40, 200, or 1,000 milligrams per kilogram (mg/kg) in the diet and found no treatment related effects. In another study cited in IRIS (Ref. 20), ethylene glycol was administered by gavage at 0, 50, 150, 500 or 1,500 mg/kg to 30 pregnant female CD-1 mice/group on gestation days 6-15. Animals were sacrificed on gestation day 18 and examined for signs of maternal and developmental toxicity. There was an increase in skeletal abnormalities at both 500, and 1,500 mg/kg. A No Observed Effect Level (NOEL) was established at 150 mg/kg for developmental toxicity with a Lowest Observed Effect Level (LOEL) of 500 mg/kg.

c. *Oncogenicity/carcinogenicity/mutagenicity.* There is no evidence that ethylene glycol is oncogenic or that it is a mutagen (Ref. 8).

d. *Acute toxicity.* Ethylene glycol is acutely toxic to humans; the minimum lethal ingested dose for adults is approximately 1.4 milliliters per kilogram (ml/kg) or 100 ml for a 70 kg person (Ref. 8). Signs of ethylene glycol poisoning can be divided into three stages. Stage one includes central nervous system (CNS) disturbances and gastrointestinal symptoms. Stage two includes signs of cardiovascular, pulmonary, and metabolic irregularities and stage three includes renal failure brought on by the precipitation of calcium oxalate crystals in renal tubules and from the direct toxic action of oxalic and glycolic acids upon the kidneys (Ref. 8).

D. Environmental Toxicity

Ethylene glycol appears to represent a low hazard to the environment (Refs. 8 and 11). The freshwater aquatic toxicity data range from a median effective concentration (EC_{50}) of 4.4 grams per milliliter (g/ml) (duckweed) to a median lethal concentration (LC_{50}) of 111 g/ml (bluegill sunfish). Terrestrial toxicity data range from a median lethal dose (LD_{50}) of 1.65 grams per kilogram (g/kg) for cats to 5.5 g/kg for dogs and 12 g/kg for mice.

Reports of animal poisonings that were reviewed, were the results of accidental or intentional releases during consumer use. They were not the result of environmental exposures that may result from releases of ethylene glycol that are reasonably likely to come from TRI reporting facilities under normal operating conditions.

E. Exposure Assessment

Ethylene glycol can be acutely toxic to humans. Therefore, an assessment was conducted of the potential for adverse acute human health effects to occur as a result of concentrations of ethylene glycol that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases from facility sites (Refs. 5, 6, and 13). As discussed above in Unit III.C. of this preamble, ethylene glycol produces adverse chronic health effects only at relatively high doses and thus has low chronic toxicity. Therefore, an exposure assessment was also conducted for chronic health effects (Refs. 5, 6, and 21). For a discussion of the use of exposure in EPCRA section 313 listing/delisting decisions, refer to the **Federal Register** of November 30, 1994.

Ethylene glycol releases reported for 1992 were retrieved from the Toxic Release Inventory System (TRIS) data base. The TRIAIR model, the Office of Pollution Prevention and Toxics' (OPPT) program for assessing releases of TRI chemicals to the atmosphere, was used to estimate chronic concentrations and exposures resulting from releases of ethylene glycol. The Point Plume (PTPLU) model was used to derive estimates of acute concentrations and exposures resulting from atmospheric releases. The TRIAIR model assumes a 99.9 percent destruction efficiency for all releases that are reported as sent to incinerations. A half-life of 22.6 hours in the atmosphere was used for ethylene glycol in the assessment. Ethylene glycol is quite biodegradable, but is not readily sorbed, volatilized, or hydrolyzed (Ref. 6).

According to the 1992 releases obtained from TRIS, over 11.7 million pounds of ethylene glycol are released per year by about 940 facilities nationwide. Data from the Aerometric Information Retrieval System (AIRS) Facility Subsystem were also considered. Based on review of AIRS and the type of data available for ethylene glycol, it was determined that the data for ethylene glycol are not adequate to support an exposure assessment.

Eighteen states each discharging over 100,000 pounds per year accounted for 93 percent of the total reported releases of ethylene glycol to the atmosphere. These releases were used for chronic exposure estimations. Each of the highest per-site discharges were used to estimate concentrations and exposures under acute conditions.

Concentrations modeled with the PTPLU model can be expected to occur up to 250 meters from the source, which may be beyond the facility fenceline. The PTPLU model provides ground-level concentrations which are hourly average values. Incorporating wind conditions, three scenarios were generated: (1) The typical situation; (2) the stagnation situation; and (3) the maximum situation. The maximum scenario is anticipate to last for only 2 hours, as compared with the 24-hour duration of the typical and stagnation scenarios. As the name implies, the stagnation scenario incorporates relatively little air movement. Each scenario was run for stack releases and for fugitive releases. Assumptions made were conservative on the whole. However, the assumption that releases occur over 365 days and 24 hours a day is not conservative. If, for example, releases occurred over only 1 month, even with 24-hour a day discharge, the resulting exposure estimates would increase by a factor of 12 or one order of magnitude.

F. Exposure Evaluation

1. *Chronic inhalation exposure.* In evaluating chronic inhalation exposures, ideally, exposure estimates would be compared to an RfC. However, in this case chronic inhalation information is neither readily available nor abundant, so an RfC has not been derived for ethylene glycol. In general, the oral RfD should not be used to evaluate inhalation exposures to ethylene glycol because it appears that the metabolism via the two routes is different. Specifically, this is demonstrated by the lack of toxic metabolites of ethylene glycol found in the urine and plasma of animals dosed via inhalation. Additionally, it is believed that the proximate cause for the toxicity seen from ethylene glycol is not attributed to the chemical itself but rather to its metabolites. Therefore use of the oral RfD would tend to be overly protective for inhalation effects from exposure to ethylene glycol. If, however, the evaluation of the chronic exposure data indicates that concentrations are below the RfD value, then the likelihood of concentrations of concern existing for inhalation effects is greatly diminished. For these reasons, the chronic exposures predicted were compared to the oral RfD of 2 mg/kg/day. The comparison showed that even the highest chronic exposures predicted for the chemical are, at a minimum, an order of magnitude below the RfD. Therefore, it is not predicted that concentrations of concern will exist for chronic inhalation exposures to ethylene glycol as a result

of releases from TRI reporting facilities (Ref. 6).

2. *Acute inhalation exposure.* Although the oral RfD was used to assess chronic inhalation exposures it was not used to assess acute inhalation exposures. This is because oral RfDs are based on the assumption of lifetime exposure (i.e., long-term exposure) and in most cases are not appropriately applied to less-than-lifetime exposure situations such as acute inhalation exposures. In addition, as discussed above, it appears that ethylene glycol metabolism is different via the oral and inhalation routes of exposure. Therefore, instead of using the RfD, the acute inhalation assessment focused on the generation of Margin of Exposure (MOE) calculations for inhalation exposures. A MOE calculation is used in instances of non-cancer endpoints and is essentially a ratio of the NOAEL or LOAEL and the estimated exposure to the particular chemical, including any modifying factors on the exposure (absorption, etc.). The resultant value is then compared to the product of the uncertainty factors which are selected for the chemical of interest. Uncertainty factors are generally factors of 10 with each factor representing a specific area of uncertainty in the available data. For ethylene glycol, a factor of 10 was introduced to account for the possible differences in responsiveness between humans and animals in prolonged exposure studies and a second factor of 10 was used to account for variation in susceptibility among individuals in the human population. The resultant uncertainty factor of 100 was therefore used in this assessment. This assessment focused on maternal and developmental toxicity, which EPA believes are the most significant adverse chronic effects caused by ethylene glycol. For the generation of MOEs used in this assessment the NOAELs from the Tyl study (Ref. 18) were utilized.

MOEs calculated from estimated stack emissions were below the relevant uncertainty factors for the top two releasers for all exposure scenarios for maternal toxicity. For developmental toxicity, MOEs below the relevant uncertainty factors were calculated for the stagnant and maximum exposure scenarios. MOEs calculated from fugitive releases under the stagnant condition were also below the relevant uncertainty factors for the top five releasers for both maternal and developmental toxicity. A similar situation was observed under the maximum scenario for maternal toxicity. Two things should be noted about the calculated MOEs. The first is that all exposure estimates were driven by facility specific data reported as required under EPCRA section 313. These estimates are considered within the realm of possibility, although are characterized as "what if" scenarios. These "what if" scenarios provide a possible exposure level, without probability and are not based on bounding or worst-case conditions which fall outside the exposure curve. Second, there is limited information to suggest that no metabolites are formed when ethylene glycol is inhaled. Since the toxicity data indicates that the metabolites of ethylene glycol are much more toxic than ethylene glycol itself, this normally would greatly reduce the concern for inhalation exposure to this chemical. However, adverse effects were noted in the 1995 Tyl study (Ref. 18) with nose-only exposure in rodents, which indicates that ethylene glycol is toxic via the inhalation route of exposure. Therefore, the resultant NOAELs from that study were utilized in this acute inhalation exposure assessment. Further, 100 percent of the inhaled dose of ethylene glycol is assumed to be absorbed.

In summary, based on the concentrations likely to exist beyond facility site boundaries and the resulting MOE calculations, there is a potential for chronic maternal and developmental effects for the general population following acute inhalation exposures to ethylene glycol (Ref. 6).

3. *Acute and chronic oral exposures.* The potential dose rates predicted for surface water driven oral exposures are identified as bounding estimates and are, therefore, likely to be much higher than actual exposures. Using the highest potential dose rate identified in the exposure assessment of 80 mg/day and dividing by 70 kg (standard assumption for body weight), a modified dose of 1.143 mg/kg/day was calculated. This dose is below the RfD of 2 mg/kg/day indicating that the exposure estimated is not likely to be associated with adverse chronic health risks (Refs. 6 and 21).

None of the exposure data indicates that ethylene glycol will be present beyond facility site boundaries at concentrations that can reasonably be anticipated to cause the adverse acute human health effects discussed under Unit III.C.2.d. of this preamble (Refs. 6 and 13). Therefore, it is unlikely that adverse acute human health effects are reasonably likely to occur as a result of concentrations likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases of ethylene glycol.

G. Summary of Technical Review

The data indicate that, based on the doses required to cause adverse effects, ethylene glycol has low chronic and acute toxicity to humans both orally and by inhalation. The exposure analysis indicates that ethylene glycol cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases from facility sites. The analysis of ethylene glycol's chronic toxicity concluded that ethylene glycol can reasonably be anticipated to cause chronic maternal and developmental effects in humans at relatively high doses. It was also determined that concentrations of ethylene glycol that are reasonably likely to exist beyond facility site boundaries as a result of acute exposure scenarios are reasonably likely to be sufficient to cause these chronic maternal and developmental effects. Based on available literature, ethylene glycol represents a low hazard to the environment and is not anticipated to cause environmental toxicity as a result of reported releases of ethylene glycol from facility sites.

IV. Explanation

Since the petition to delete ethylene glycol has been withdrawn by Bonded Products, Inc. EPA has no statutory responsibility to deny or grant the initial request. However, because the technical review and evaluation of the petition are complete, EPA determined that it is in the public's best interest, and clearly in keeping with the Community Right-to-Know ethic, to provide the public with a summary of EPA's review and conclusion. Based on the technical review discussed above, EPA concluded that this petition be denied based on concerns for chronic maternal and developmental effects for the general population following acute inhalation exposure from reported air releases of ethylene glycol. EPA believes that ethylene glycol meets the toxicity criteria of EPCRA section 313(d)(2)(B) based on the available chronic maternal and developmental toxicity data and the exposure analysis.

V. References

1. USEPA, OPPT. Tou, Jenny; "Chemistry Report on Ethylene Glycol, EPCRA Section 313 Delisting Petition." (June 1, 1994).

2. USEPA, OPPT. Krueger, Susan; "Economic Analysis of the Proposed Delisting of Ethylene Glycol from the

EPCRA Section 313 Toxic Release Inventory." (May 16, 1994).

3. USEPA, OPPT. Memorandum from Pat Jennings, Exposure Assessment Branch, Economics, Exposure, and Technology Division. Subject: Summary of the Environmental Fate of Ethylene Glycol. (May 20, 1994).

4. USEPA, OPPT. Memorandum from Mary Henry, Health Effects Branch, Health and Environmental Review Division. Subject: Ethylene Glycol Petition. (August 3, 1995).

5. USEPA, OPPT. Memorandum from Patricia Harrigan, Exposure Assessment Branch, Economics, Exposure, and Technology Division. Subject: Expanded Exposure Assessment for Ethylene Glycol. (June 19, 1995).

6. USEPA, OPPT. Memorandum from Linda M. Rusak, Hazard Integrator, Analysis and Information Management Branch, Chemical Screening and Risk Assessment Division. Subject: Petition to Delist Ethylene Glycol from TRI. (September 6, 1995).

7. USEPA, OPPT. Memorandum from Leonard C. Keifer, Chemist, Health Effects Branch, Health and Environmental Review Division. Subject: Metabolism of Ethylene Glycol. (March 29, 1995).

8. USEPA, OPPT. Memorandum from Angela Auletta, Chief, Health Effects Branch, Health and Environmental Review Division. Subject: Petition to Delist Ethylene Glycol from the Toxic Chemical Release Inventory. (May 23, 1994).

9. USEPA, OPPT. Memorandum from Mary Henry, Health Effects Branch, Health and Environmental Review Division. Subject: Review of Developmental Toxicity Studies with Ethylene Glycol. (March 24, 1995).

10. USEPA, OPPT. Memorandum from Leonard C. Keifer, Chemist, Health Effects Branch, Health and Environmental Review Division. Subject: Review of Absorption/ Metabolism Study for Ethylene Glycol Administered via Inhalation and Comparison with Results from Dosing via Oral Gavage and Dermal Administration. (August 1, 1995).

11. USEPA, OPPT. Memorandum from J. V. Nabholz, Health and Environmental Review Division. Subject: Ethylene Glycol [107-21-1]: Wildlife Poisoning. (December 5, 1995).

12. USEPA, OPPT. Memorandum from Patricia Harrigan, Exposure Assessment Branch, Economics, Exposure, and Technology Division. Subject: Comparison of 1993 Releases of Ethylene Glycol. (August 24, 1995).

13. USEPA, OPPT. Memorandum from Linda M. Rusak, Hazard Integrator, Analysis and Information Management Branch, Chemical Screening and Risk Assessment Division. Subject: Ethylene Glycol, Acute Risk Assessment. (December 16, 1994).

14. USEPA, ORD. Memorandum from Carole Kimmel, National Center for Environmental Assessment. Subject: Review of Ethylene Glycol Risk Assessment for EPCRA Section 313 Delisting Petition. (November 2, 1995).

15. Frantz, S.W. et al., "Ethylene Glycol: Comparison of Pharmacokinetics and Material Balance Following Single Intravenous, Oral and Cutaneous Administration to Male and Female Sprague-Dawley Rats." Bushy Run Research Center, Export, PA. Project Report 51-543. (March 24, 1989).

16. Marshall, Thomas C. and Yung Sung Cheng. "Deposition and Fate of Inhaled Ethylene Glycol Vapor and Condensation Aerosol in the Rat." Fundamental and Applied Toxicology. v. 3, (1983), pp. 175-181.

17. Tyl, R.W. et al., "Evaluation of the Developmental Toxicity of Ethylene Glycol Aerosol in the CD Rat and CD-1 Mouse by Whole-Body Exposure." Fundamental and Applied Toxicology. v. 24, (1995), pp. 57-75.

18. Tyl R.W. et al., "Evaluation of the Developmental Toxicity of Ethylene Glycol Aerosol in CD-1 Mice by Nose-Only Exposure." Fundamental and Applied Toxicology. v. 27, (1995), pp. 49-62.

19. IRIS. 1994. "Glossary of Risk Assessment-Related Terms." U.S. Environmental Protection Agency's Integrated Risk Information System. (February 1, 1994).

20. IRIS. 1994. U.S. Environmental Protection Agency's Integrated Risk Information System file pertaining to Ethylene Glycol. (March 8, 1994).

21. USEPA, OPPT. Memorandum from Linda M. Rusak, Hazard Integrator, Analysis and Information Branch, Chemical Screening and Risk Assessment Division. Subject: Ethylene Glycol, Chronic Risk Assessment. (August 19, 1996).

VI. Administrative Record

The record supporting this notice is contained in docket control number OPPTS-400110. All documents, including the references listed in Unit V. above and an index of the docket, are available to the public in the TSCA Non-Confidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects

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

Dated: April 28, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–11902 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5822–2]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; Indian Line Farm Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into settlement agreements to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlements and of the opportunity to comment. The settlements are intended to resolve the liability under CERCLA of the Metropolitan District Commission ("MDC"), the Commonwealth of Massachusetts, and TDL, Inc., for past costs incurred by EPA in connection with an emergency removal action conducted in 1992 and 1993, at the Indian Line Farm Superfund Site in Canton, Massachusetts.

DATES: Comments must be provided on or before June 6, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: Proposed Administrative Agreement under 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; RE: Indian Line Farm Superfund Site Canton, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Sandra Dupuy, U.S. Environmental Protection Agency, J.F.K. Federal

Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed administrative settlement under 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice. The Metropolitan District Commission, the Commonwealth of Massachusetts and TDL, Inc., have executed signature pages committing them to participate in the settlement. Under the proposed settlements, the Metropolitan District Commission, the Commonwealth of Massachusetts, and TDL, Inc., will reimburse EPA for past costs expended in connection with an emergency removal action conducted at the Indian Line Farm Superfund Site. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice will have approved this settlement in writing prior to the agreement becoming effective. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Sandra Dupuy, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3320.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–).

Dated: April 17, 1997.

John DeVillars,

Regional Administrator.

[FR Doc. 97–11907 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400112; FRL–5717–9]

Ethylene Glycol; Risk Assessment Peer Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is giving notice of its ongoing peer review process for evaluating its risk assessment for ethylene glycol, and announcing that it will include in this process an external peer review. The external peer review will be an open process that will include stakeholders and other interested parties. EPA is also soliciting relevant information that will aid this peer review process.

DATES: Information should be submitted by [Insert date 60 days from date of publication in the **Federal Register**].

ADDRESSES: Submitted information should be provided in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099, Washington, DC 20460, Attention: Docket Control Number OPPTS–400112.

Information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of information on this notice will be placed in the public record and will be available for public inspection. The public record is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vanessa Vu, Director, Risk Assessment Division (7403), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3442.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, EPA is announcing the results of its review of ethylene glycol for purposes of its continued listing as a toxic chemical under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C 11023. While EPA believes the risk assessment in the EPCRA notice is sufficient for use in the listing evaluation discussed in that notice, it may not be adequate for other purposes such as standard setting. For purposes of making listing decisions under section 313, EPCRA does not require EPA to perform formal risk assessments. Therefore, when EPA considers exposure, a screening-level risk assessment such as that in the EPCRA notice is sufficient. Whether such a risk assessment is adequate for other purposes must be determined on a case-by-case basis pursuant to the applicable statutory or regulatory authority.

Persons interested in ethylene glycol should be aware that EPA is continuing the refinement of its ethylene glycol risk assessment. In response to EPA's Risk Characterization Policy (Carol M. Browner, EPA Administrator, *EPA Risk Characterization Program*, March 21, 1995) the Agency's Science Policy Council (SPC), a group of senior risk managers and risk assessors, is sponsoring a series of colloquia to provide internal peer review of several EPA risk assessments as case studies, including the one for ethylene glycol. These colloquia bring together risk assessors and risk managers to discuss the quality of the assessments, and to suggest ways to improve the presentation of the characterization of risk. The risk assessments chosen for this process are in the last stages of the internal EPA review.

After the internal peer review process is complete, the SPC plans to have a number of these case studies externally peer-reviewed. Although the SPC has not yet finalized the procedures for the external peer review process, it is clear that the review will be an open process that will include stakeholders and other interested parties. As part of this process, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) will submit the assessment for ethylene glycol for external peer review.

EPA will issue another **Federal Register** notice that provides specific details about the external peer review process for the ethylene glycol risk assessment. As a general matter, the scientific peer review will address the strength of the hazard and risk conclusions and the reasonableness of policy decisions and assumptions used in the risk assessment process.

EPA is encouraging anyone with information relevant to the above issues (or other aspects of the ethylene glycol risk assessment) to submit that information to the address listed under the ADDRESSES unit by (Insert date 60 days from date of publication in the **Federal Register**). Having the information in advance will assist in the preparations for an efficient and effective external peer review.

List of Subjects

Environmental protection.

Dated: May 5, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–12021 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5822–8]

Water Pollution Control; Program Application by North Carolina To Administer the Sludge Management (Biosolids) Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction; notice of application and public comment period.

SUMMARY: On April 8, 1997 (62 FR 16806) EPA published a notice, pursuant to 40 CFR 501.31, that the State of North Carolina has submitted an application for EPA to approve the existing North Carolina Domestic Waste Permit program for authorization to administer and enforce the federal sewage sludge management (biosolids) program. EPA is extending the comment period deadline from May 8, 1997 to May 23, 1997. This extension will allow the full 45 day comment period required in accordance with 40 CFR 501.31.

FOR FURTHER INFORMATION CONTACT: Mr. Roosevelt Childress, Chief, Surface Water Permits Section, telephone (404) 562–9279, or Mr. Vince Miller, EPA Region 4 Sludge Management Coordinator, telephone (404) 562–9312, or write to the following address: Water Management Division, Surface Water Permits Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

Dated: April 30, 1997.

Robert F. McGhee,

Director, Water Management Division, Environmental Protection Agency, Region 4.

[FR Doc. 97–11904 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 28]

Agency Information Collection Activities; Proposal Collection; Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: Ex-Im Bank as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed information collection, as required by the Paperwork Work Reduction Act of 1995.

DATES: Written comments should be received on or before July 1, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Debbie Ambrose, 811 Vermont Avenue, N.W., Room 1023, Washington, D.C. 20571, (202) 565–3133.

SUPPLEMENTARY INFORMATION:

Title: U.S. Small Business Administration, Export-Import Bank of the United States, Joint Application for Working Capital Guarantee.

OMB Number: 3048–0003.

Form Number: EIB–SBA 84–1 (Rev. 8/94).

Type of Review: Revision.

Abstract: The proposed form is to be used by commercial banks and other lenders as well as U.S. exporters in applying for guarantees on working capital loans advanced by the lenders to U.S. exporters.

Frequency of use: Upon application for guarantees on working capital loans advanced by the lenders to U.S. exporters.

Respondents: Commercial banks and other lenders, as well as U.S. exporters throughout the United States.

Estimated total number of annual responses: 600.

Estimated time per respondent: 2 hours.

Estimated total number of hours needed to fill out the form: 1,200.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 1, 1997.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 97–11831 Filed 5–6–97; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 1, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0734.

Expiration Date: 03/31/2000.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Estimated Annual Burden: 168 respondents; 1074.6 hours per response (avg.); 180,547 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $633,000.

Description: In Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order in CC Docket No. 96–150 (Report and Order), the Commission addresses the accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Telecommunications Act of 1996. The Report and Order prescribes the way incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA

telecommunications and information services, telecommunications equipment and customer premises equipment manufacturing, electronic publishing, alarm monitoring services and payphone service. The Commission concludes that its current cost allocation rules generally satisfy the 1996 Act's accounting safeguards requirements when incumbent LECs, including the BOCs, provide services permitted under Sections 260 and 271 through 276 on an in-house basis. The Commission also concludes that its current affiliate transactions rules generally satisfy the 1996 Act's accounting safeguards requirements when incumbent LECs, including the BOCs, are required to, or choose to, use an affiliate to provide services permitted under sections 260 and 271 through 276. In the Report and Order, the Commission also modifies its affiliate transactions rules to provide greater protection against subsidization of competitive activities by subscribers to regulated telecommunications services. The information collections will enable the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to the Records Management Branch, Washington, D.C. 20554.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–11830 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Control in Insured Nonmember Banks; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its Statement of Policy "Changes in Control in Insured Nonmember Banks" (Statement of Policy). The Statement of Policy is duplicative and unnecessary because all substantive information that it contains is also provided in FDIC change in bank control regulations.

DATES: The Statement of Policy is rescinded May 7, 1997.

FOR FURTHER INFORMATION CONTACT: Charles J. Magyar, Review Examiner, (202/898–6752), Division of Supervision; Sandy Comenetz, Counsel, (202/898–3582), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Statement of Policy is duplicative and unnecessary, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to persons seeking to acquire control of an insured state nonmember bank. The Statement of Policy was adopted by the Board of Directors on January 24, 1979. 44 FR 7122 (Jan. 24, 1979).

The relevant supervisory information and guidance contained in the Policy Statement is provided in 12 CFR Part 303, § 303.4, and 12 CFR Part 308, Subpart D.

For the above reasons, the Policy Statement is rescinded.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, D.C. this 29th day of April, 1997.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–11821 Filed 5–6–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 7, 1997.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W.; Washington, DC 20551, or

delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Request for Proposal (RFP); Request for Price Quotations (RFPQ)
Frequency: on occasion
Reporters: vendors and suppliers
Annual reporting hours: 7,610
Estimated average hours per response: 20.0 (RFP); 0.5 (RFPQ)
Number of respondents: 248 (RFP); 5,300 (RFPQ)
Small businesses are affected.

General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. sections 243, 244, and 248) and is not given confidential treatment unless a respondent requests that portions of the information be kept confidential and the Board grants the request pursuant to the applicable exemptions provided by the Freedom of Information Act (5 U.S.C. section 552).

Abstract: The Federal Reserve Board uses the RFP and the RFPQ as needed to obtain competitive proposals and contracts from approved vendors of goods and services. Depending upon the goods and services for which the Federal Reserve Board is seeking competitive bids, the respondent is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but also the means of performing a particular service and a description of the qualification of the staff who will perform the service (RFP). The Board staff uses this information to analyze the proposals and to select the best offer.

Board of Governors of the Federal Reserve System, May 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–11838 Filed 5-6-97; 8:45AM]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 1997.

A. Federal Reserve Bank of Cleveland (Jeffrey Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of 1st Business Corporation, Los Angeles, California, and thereby indirectly acquire 1st Business Bank, Los Angeles, California.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. InvestorsBancorp, Inc., Pewaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of InvestorsBank, Pewaukee, Wisconsin, a *de novo* bank.

2. Schonath Family Partnership, LP, Oconomiwoc, Wisconsin, to become a bank holding company by acquiring 25.8 percent of the voting shares of InvestorsBancorp, Inc., Pewaukee, Wisconsin, and thereby indirectly acquire InvestorsBank, Pewaukee, Wisconsin, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Farmers State Holding Company, Marion, South Dakota; to merge with First State Financial Services, Inc., Bridgewater, South Dakota, and thereby indirectly acquire First State Bank, Bridgewater, South Dakota.

Board of Governors of the Federal Reserve System, May 1, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11813 Filed 5–6–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 23245, April 29, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, May 5, 1997.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of possible retirement incentive program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11964 Filed 5–5–97; 9:28 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

Notice of Meetings: Aging Network Forums

AGENCY: Administration on Aging, HHS.

ACTION: Notice that the Administration on Aging will hold Aging Network Forums at several sites across the nation.

SUMMARY: The Administration on Aging (AoA) will hold several aging network forums, over the next several weeks, for the purpose of obtaining the views of interested organizations and individuals regarding the AoA and the Older Americans Act. A schedule of upcoming forums is provided below, organized by date, site, and the contact person for the AoA. Persons planning on attending a forum who require special assistance or accommodation, such as sign language interpreting, must notify the cognizant AoA representative no later than five (5) days prior to the forum.

May 13; Chicago, IL; Larry Brewster (312–353–3141)

May 21; San Francisco, CA; Percy Devine (415–437–8780)

June 2; Kansas City, MO; Larry Brewster (816–374–6015)

William F. Benson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 97–11786 Filed 5–6–97; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Revised Form OCSE–100, State Plan for Child Support Collection and Establishment of Paternity under Title IV–D of the Social Security Act.

OMB No.: 0970–0017.

Description: The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive Federal funds to meet the costs of these activities. Due to enactment of PRWORA and the passage of time, we are updating our State plan by revising or adding 34 preprint pages. We are requesting approval of the revised State plan preprint pages for Section 2.1, Establishing Paternity and Securing Support, Section 3.4, Collection and Distribution of Support Payments, Section 2.5, Services to Individuals Not Receiving Title IV–A and IV–E Foster Care Assistance, Section 2.6, Provision of Services in Interstate IV–D Cases, Section 2.12–1, Wage or Income Withholding, Section 2.12–2, Expedited Processes, Section 2.12–4, Liens, Section 2.12–5, Paternity Establishment, Section 2.12–7, Reporting Arrearages to Credit Bureaus, Section 2.12–10, Simplified Process for Review and Adjustment of Child Support Orders, Section 2.12–11, Full Faith and Credit for Determination of Paternity, Section 2.12–12, Access to Records for Location, Section 2.12–13, Collection and Use of Social Security Numbers for use in Child Support Enforcement, Section 2.12–14, Administrative Enforcement in Interstate Cases, Section 2.12–15, Work Requirements for Persons Owing Child Support, Section 2.12–16 State Law Authorizing Suspension of Licenses, Section 2.12–17, Financial Institution Data Matches, Section 2.12–18 Enforcement of Orders Against Paternal or Maternal Grandparents, Section 2.12–19, Enforcement of Orders for Health Care Coverage, Section 2.12–20, Adoption of Uniform State Laws, Section 2.12–21, Laws Voiding Fraudulent Transfers, Section 2.14, Rights to Notification of Hearings, Section 2.15, Federal and State Reviews and Audits, Section 3.1, Cooperative Arrangements, Section 2.4, Standards for an Effective Program, Section 3.8, Computerized Support Enforcement System, Section 3.9, Publicize Availability of Child Support Services, Section 3.13, Privacy Safeguards, Section 3.14, Collection and Disbursement of Support Payments, Section 3.15, State Director of New Hires, Section 3.16, Cooperation by Applicants for and Recipients of Part A Assistance, Section 3.17, Definitions for Collecting and Reporting Information, Section 3.18, Denial of Passports for Non-Payment of Child Support, and Section 3.19, Request for Services by a Foreign County. The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Respondents: State governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	1836	.717	1,316

Estimated Total Annual Burden Hours: 1,316.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, Larry Guerrero.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: May 1, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–11839 Filed 5–6–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 736]

Intervention Studies in Agricultural Safety and Health; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces that grant applications are being accepted for innovative small projects relating to occupational safety and health in the agriculture industry. Such projects are intended to develop and evaluate the effectiveness of methods or approaches for preventing injuries and illnesses among agricultural workers. Thus, this announcement is not intended for traditional hypothesis-testing research projects to identify and investigate the relationships between health outcomes and occupational exposures to hazardous agents.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of "Occupational Safety and Health." (For ordering a copy of "Healthy People 2000," see the section *Where to Obtain Additional Information.)*

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) (42 U.S.C. 241(a)), and the Occupational Safety and Health Act of 1970, Section 20(a) (29 U.S.C. 669(a)) and Section 22 (29 U.S.C. 671). The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority- and/or woman-owned businesses.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

About $500,000 is available in fiscal year (FY) 1997 to fund approximately 3 to 4 project grants. The amount of funding available may vary and is subject to change. Awards are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year. Awards are expected to begin on or about September 1, 1997. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Public Law No. 104–208, provides as follows:

Section 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Public Law 104–208 (September 30, 1996).

Background

Agricultural workers represent a major workforce in the United States. The agricultural industry, by classification, includes those involved in farming, agricultural technology, fishing, and forestry. The health and safety effects in this industry are diverse, and the potential for disease and injury covers a wide range of populations and work.

Hired workers, farm owner-operators, and unpaid family members who live in the work environment are exposed to the health and safety hazards of farming in the United States. The number of hired workers varies widely by season from 600,000 to 950,000 workers (United States Department of Agriculture (USDA) National Agricultural Statistics Service, Farm Labor, 1995 and 1996). USDA data show 5.9 million persons own, operate, and manage farms or are family members who live on these farms (Farm Costs and Return Survey, 1993). It is unknown how many children and other family members of migrant or seasonal workers who are not recorded as working are exposed. These agricultural workers and their families experience a disproportionate share of fatalities, injuries and diseases associated with many physical, chemical, and biological hazards. Because many who work in agriculture are not covered by traditional protections (e.g., workers' compensation, Occupational Safety and Health Administration regulations), data on such injuries are more difficult to reach and available data are likely to underestimate the scope of the problem.

According to the National Traumatic Occupational Fatality surveillance system, the fatality rate for agricultural industries is 2.6 times greater than the national average for all industries; the

average is more than 740 deaths annually. Data from the Bureau of Labor Statistics Annual Survey for 1994 indicate that the rate for injuries involving lost workdays in the agricultural industries exceeds all industry sectors (including mining) except construction and transportation.

Agricultural workers are also more likely to develop serious work-related illnesses or disabling conditions. In particular, agricultural workers experience increased rates of certain forms of lung disease (e.g., occupational asthma and hypersensitivity pneumonitis); cumulative trauma disorders such as carpal tunnel syndrome and other musculoskeletal disorders; noise-induced hearing loss; and certain types of cancer (e.g., leukemia, non-Hodgkin's lymphoma, and multiple myeloma).

In 1989, Congress directed CDC to sponsor broad-based, public health initiatives to reduce the significant injuries and illnesses among agriculture workers and their families. Through cooperative agreement awards, the National Institute for Occupational Safety and Health (NIOSH) established cooperative efforts with universities, public health departments, and others, to address the research, surveillance, and intervention priorities of the agricultural industry. These programs included laboratory research, broad-based epidemiology, public health surveillance, education and training, and the provision of basic health and hazard control services in the agricultural community.

In December 1994, an external review panel evaluated the NIOSH Agriculture Initiative. The panel recommended that NIOSH continue its strong support of the Agriculture Initiative; and in addition to its current efforts, provide for intervention research grants to enable current and previous collaborators, as well as other groups, the opportunity to propose innovative research or demonstrations projects. Interventions include techniques such as engineering control technologies, model standards, worker participation programs, training, and community programs to prevent disease or injury. Intervention research determines the efficacy and efficiency of these techniques or combinations of these techniques.

Although many intervention strategies have been applied to various work settings, knowledge about what works best is limited. Employers, owner-operators, agricultural workers, public decision makers, cooperative extension services agents, and others, need this information to make informed decisions about prevention strategies that work well and support the use of limited resources. Research is needed to pilot and evaluate prevention intervention efforts which, if successful, can be adopted on a wider scale in a region or throughout the nation. This work should be done in cooperation with agricultural workers and employers to assure consideration of the economic and organizational factors that determine if interventions will be adopted.

Purpose

NIOSH seeks to prevent work-related diseases and injuries in the agricultural production industry by designing, implementing, and evaluating measures to reduce occupational hazards. If prevention measures are currently unavailable, new technologies should be developed for controlling hazardous exposures. Such new technologies must be evaluated to determine if prevention measures are feasible, even for smaller agricultural operations.

Intervention research—including control technology, educational programs, health promotion activities, and community-based initiatives—examines the utility and impact of new and existing preventive measures in the workplace.

Programmatic Interest

The focus of these grants should facilitate progress in preventing adverse effects among agricultural workers. A project that is proposed to develop or test the efficacy of an intervention should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for solving occupational safety and health problems. These grants should not be directed at the development of an intervention, but to test the efficacy of a known intervention.

A project that is proposed to demonstrate the effectiveness of an intervention should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. A demonstration project should be conducted in an actual workplace where a baseline measure of the occupational problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

NIOSH and its partners in the public and private sectors developed the high priority areas identified below to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to agricultural safety and health, but the rationale for the significance of the research and demonstrations to agriculture must be developed in the application.

The NORA identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. This announcement relates primarily to the priority research area, Intervention Effectiveness Research, number 18 on the list. The NORA document is available through the NIOSH Home Page: http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury

1. Allergic and Irritant Dermatitis
2. Asthma and Chronic Obstructive Pulmonary Disease
3. Fertility and Pregnancy Abnormalities
4. Hearing Loss
5. Infectious Diseases
6. Low Back Disorders
7. Musculoskeletal Disorders of the Upper Extremities
8. Traumatic Injuries

Work Environment and Workforce

9. Emerging Technologies

10. Indoor Environment
11. Mixed Exposures
12. Organization of Work
13. Special Populations at Risk

Research Tools and Approaches

14. Cancer Research Methods
15. Control Technology and Personal Protective Equipment
16. Exposure Assessment Methods
17. Health Services Research
18. Intervention Effectiveness Research
19. Risk Assessment Methods
20. Social and Economic Consequences of Workplace Illness and Injury
21. Surveillance Research Methods

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the programmatic technical assistance person identified in this announcement in the section *WHERE TO OBTAIN ADDITIONAL INFORMATION.*

Technical Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period.

The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review (IRG) group (peer review) in which they will be determined to be competitive or noncompetitive based on the review criteria. Applications determined to be noncompetitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score.

Review criteria for technical merit are as follows:

1. Technical significance and originality of the proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from other participants in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the IRG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.
2. Availability of funds.
3. Program balance among priority areas of the announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exists that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B., "Applications"). It should be postmarked no later than June 9, 1997. The letter should identify the announcement number, name of the principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before July 15, 1997 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 321, MS-E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive an application kit, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to announcement 736. You will receive a complete application kit. Business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6535; fax: (404) 842–6513; Internet: jcw6@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone (404) 639–3343; fax: (404) 639–4616; Internet: rmf2@cdc.gov.

Please Refer to Announcement Number 736 When Requesting Information and Submitting an Application

This and other CDC Announcements can be found on the CDC home page at http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

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, DC 20402–9325, telephone (202) 512–1800.

Dated: May 1, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–11879 Filed 5–6–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–97–03]

Request for Applications Under the Office of Community Services' Fiscal Year 1997 Job Opportunities for Low-Income Individuals Program

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' FY 1997 Job Opportunities for Low-Income Individuals (JOLI) Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that, based on availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 505 of the Family Support Act of 1988, as amended.

CLOSING DATE: The closing date for receipt of applications is July 7, 1997. (See Part V B. Application Submission)

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade S.W., Washington, D.C. 20447; *Contact:* Nolan Lewis (202) 401–5282, Richard Saul (202) 401–9341, Michelle Brookens (202) 401–1466.

A copy of the **Federal Register** containing this Announcement is available for reproduction at most local libraries and Congressional District O'ffices. It is also available on the Internet through GPO Access at the following web address: http://www.access.gpo.gov/su_docs/aces/aces140.html

If this Program Announcement is not available at these sources it may be obtained by telephoning the office listed under **FOR FURTHER INFORMATION CONTACT** above.

The Catalog of Federal Domestic Assistance number for OCS programs covered under this Announcement is *93.593.* The title is "Job Opportunities for Low-Income Individuals Program".

Part I—Preamble

A. Legislative Authority

Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended, authorizes the Secretary of HHS to enter into agreements with non-profit organizations (including community development corporations) for the purpose of conducting projects designed to create employment and business opportunities for certain low-income individuals.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, reauthorized Section 505 of the Family Support Act of 1988. The Act also amends certain subsections of Section 505 of the Family Support Act of 1988 to be effective July 1, 1997.

B. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—Budget Period: The interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

—Community-Level Data: Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This includes data on the population of the target area, including the percentage of TANF recipients and others on public assistance, and the percentage whose incomes fall below the poverty line; the unemployment rate; the number of new business starts and business closings; and a description of the major employers and average wage rates and employment opportunities with those employers.

—Community Development Corporation: A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business, civic leaders, and/or public officials which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has as a principal purpose, planning, developing, or managing community economic development projects.

—Hypothesis: An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: "Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

—Intervention: Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

—Job Creation: To bring about, by activities and services funded under this program, new jobs, that is, jobs that were not in existence before the start of the project. These activities can include self-employment/micro-enterprise training, the development of new business ventures or the expansion of existing businesses.

—Non-profit Organization: Any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such code.

—Non-traditional employment for women or minorities: Employment in an industry or field where women or minorities currently make-up less than ten percent of the work force.

—Outcome Evaluation: An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for replicability. It should answer the question, Did this program work?

—Private employers: Third-party private non-profit organizations or third-party for-profit businesses operating or proposing to operate in the same community as the applicant and which are proposed or potential employers of project participants.

—Process Evaluation: The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services?, and are the services being delivered as planned? It is also known as formative evaluation because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: "How was the program carried out?" In concert with the outcome evaluation, it should also help explain, "Why did this program work/not work?"

—Program Participant/Beneficiary: Any individual eligible to receive Temporary Assistance for Needy Families under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act) and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services. (See Attachment A.)

—Project Period: The total time a project is approved for support, including any extensions.

—Self-Sufficiency: A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

C. Purpose

The purpose of this program is to demonstrate and evaluate ways of creating new employment and business opportunities for certain low-income individuals through the provision of technical and financial assistance to private employers in the community, self-employment/micro-enterprise programs and/or new business development programs. A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive Temporary Assistance for Needy Families (TANF) under Part A of Title IV of the Social Security Act, as amended, or any other individual whose income level does not exceed 100 percent of the official poverty line. (See Attachment A) Within these categories, emphasis should be on individuals who are receiving TANF or its equivalent under State auspices; those who are unemployed; those residing in public housing or receiving housing assistance; and those who are homeless.

Part II—Background Information and Program Requirements

A. Eligible Applicants

Organizations eligible to apply for funding under this program are any non-profit organizations (including community development corporations) that are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code. Applicants must provide documentation of their tax exempt status. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate. Failure to provide evidence of Section 501(c) (3) or (4) tax exempt status will result in rejection of the application.

B. Project and Budget Periods

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, reauthorized and modified Section 505 of the Family Support Act of 1988, the JOLI authorizing legislation. Among the modifications effected was the deletion of sub-section (e) which had legislatively mandated project duration. Applicants are therefore free to apply for projects of from one to five years duration, depending on the proposed work program and the applicant's assessment of the time required to achieve the proposed project goals. OCS has made the programmatic determination that the nature of job creation and career development projects which meet the funding criteria set forth in this Announcement is such that it is not feasible to divide funding into 12-month increments, and that completion of the entire project is in each case necessary to achieve the purposes of the JOLI program. Consequently, budget periods for grants under this Announcement may be up to three years. Given the limited funds available for the JOLI program, applicants should make a realistic assessment of the time and funds needed to achieve the goals set forth in their proposal, and design a work program and budget accordingly. The grant request should be for an amount needed to implement that part of the project plan supported by OCS funds, taking into consideration other cash and in-kind resources mobilized by the applicant in support of the proposed project. (See Paragraph D, below, Mobilization of Resources, and Part IV, Element VI, Budget Appropriateness and Reasonableness.)

Where an applicant proposes an overall project plan which goes beyond the initial budget period, it may be approved for a project period of up to five years, provided that no project may be funded for a total amount of more than $500,000 to carry out the same work plan in the same target area. Where the initial project period is funded for an amount less than $500,000, funding for the balance of the project period beyond the initial budget period may be requested in the future, as a continuation grant, for an amount that, when added to the initial grant will not exceed $500,000. Applications for such continuation grants will be entertained in subsequent years on a non-competitive basis, subject to: (1) the availability of funds, (2) satisfactory progress of the grantee in carrying out the work program, achieving project goals, and fulfilling the undertakings of

the originally funded application and grant conditions, including the actual dedication to the project of mobilized resources identified in the original application, and (3) determination that this would be in the best interest of the government.

C. Availability of Funds and Grant Amounts

Approximately $5,500,000 is available in FY 1997 for new grants pursuant to this Announcement. The 1996 amendments to the JOLI authorizing legislation also deleted the limitation on number of grants to be made in any one Fiscal Year. Thus the Office of Community Services expects to award approximately 10 to 20 grants by September 30, 1997, based on the amounts requested and contingent on the availability of funds. Grants of up to $500,000 in OCS funds for a budget period of up to three years will be awarded to selected organizations under this program in FY 1997.

D. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who mobilize cash and/or third-party in-kind contributions for direct use in the project. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Public-Private Partnerships program element. Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Element V. and Part VI, B. Instructions for Completing the SF–424A, Section C, Non-Federal Resources)

E. Program Participants/Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS and individuals eligible to receive TANF under Part A of Title IV of the Social Security Act, as amended.

Attachment A to this Announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They also are accessible on the OCS Electronic Bulletin Board for reading and/or downloading. (See **FOR FURTHER INFORMATION** at beginning of this Announcement.)

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

F. Prohibition and Restrictions on the Use of Funds

The use of funds for new construction or the purchase of real property is prohibited. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program are allowable when specifically approved by ACF in writing.

If the applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidelines.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

G. Multiple Submittals

Due to the limited amount of funds available under this program, only one proposal from an eligible applicant will be funded by OCS from FY 1997 JOLI funds pursuant to this Announcement (Program areas 1.0 and 2.0).

H. Re-funding

OCS will not re-fund a previously funded grantee to carry out the same work plan in the same target area.

I. Sub-Contracting or Delegating Projects

An applicant will not be funded where the proposal is for a grantee to act as a straw-party, that is, to act as a mere conduit of funds to a third party without performing a substantive role itself. This prohibition does not bar subcontracting or subgranting for specific services or activities needed to conduct the project.

J. Maintenance of Effort

The application must include an assurance that activities funded under this Program Announcement are in addition to, and not in substitution for, activities previously carried out without Federal assistance. (See Part VII–A 9. and Attachment M)

Part III—Application Requirements and Priority Areas

A. Program Focus

The Congressional Conference Report on the FY 1992 appropriations for the Department of Labor, Health and Human Services, and Education and related agencies directed the ACF to require economic development strategies as part of the application process to ensure that highly qualified organizations participate in the demonstration [H.R. Conf. Rep. No. 282, 102d Cong., 1st Sess. 39 (1991)].

Priority will be given to applications proposing to serve those areas containing the highest percentage of individuals receiving Temporary Assistance to Needy Families (TANF) under Title IV–A of the Social Security Act, as amended.

While projected employment in future years may be included in the application, it is essential that the focus of the project concentrate on the creation of new full-time, permanent jobs and/or new business development opportunities for TANF recipients and other low-income individuals during the duration of the grant project period. OCS is particularly interested in receiving proposals in two areas:

1. Local Initiative

In the spirit of "local initiative" OCS looks forward to innovative proposals that grow out of the experience and creativity of applicants and the needs of their clientele and communities.

Applicants should include strategies which seek to integrate projects financed and jobs created under this program into a larger effort of broad community revitalization which will promote job and business opportunities for eligible program participants and impact the overall economic environment.

OCS will only fund projects that create new employment and/or business opportunities for eligible program participants. That is, new full-time permanent jobs through the expansion

of a pre-identified business or new business development, or by providing opportunities for self-employment. In addition, projects should enhance the participants' capacities, abilities and skills and thus contribute to their progress toward self-sufficiency.

2. Some Suggested Areas That Can Provide Jobs and Careers for TANF Recipients In Response to Welfare Reform

With national Welfare Reform a reality, and many States already implementing "welfare-to-work" programs, the need for well-paying jobs with career potential for TANF recipients becomes ever more pressing. In this context, the role of JOLI as a vehicle for exploring new and promising areas of employment opportunity for the poor is more important than ever.

Within the JOLI Program framework of job creation through new or expanding businesses or self-employment, OCS would welcome proposals offering business or career opportunities to eligible participants in a variety of fields. For instance, these might include Day Care, and transportation which are not only opportunities for employment, but when not available can be serious barriers to employment for TANF recipients; Environmental Justice initiatives involving activities such as toxic waste clean-up, water quality management, or Brownfields remediation; health-related jobs such as Home Health Aides or medical support services; and non-traditional jobs for women and minorities.

B. Creation of Jobs and Employment Opportunities

The requirement for creation of new, full-time permanent employment opportunities (jobs) applies to all applications. OCS has determined that the creation of non-traditional job opportunities for women or minorities in industries or activities where they currently make up less than ten per cent of the work force (see definitions) meets the requirements of the JOLI legislation for the creation of new employment opportunities. OCS continues to solicit other JOLI applications to propose the creation of jobs through the expansion of existing businesses, the development of new businesses, or the creation of employment opportunities through self-employment/microenterprise development.

Proposed projects must show that the jobs and/or business/self employment opportunities to be created under this program will contribute to achieving self-sufficiency among the target population. The employment opportunities should provide hourly wages that exceed the minimum wage and also provide benefits such as health insurance, child care, and career development opportunities.

C. Cooperative Partnership Agreement With the Designated Agency Responsible for the Temporary Assistance for Needy Families (TANF) Program

A formal, cooperative relationship between the applicant and the designated State agency responsible for administering the Temporary Assistance for Needy Families (TANF) program (as provided for under title IV–A of the Social Security Act), as amended, in the area served by the project is a requirement for funding. The application must include a signed, written agreement between the applicant and the designated State agency responsible for administering the TANF program, or a letter of commitment to such an agreement within 6 months of a grant award (contingent only on receipt of OCS funds). The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project.

The agreement, at a minimum, must cover the specific services and activities that will be provided to the target population. (See Attachment I for a list of the State IV–A agencies administering TANF)

D. Third-Party Project Evaluation

Proposals must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business opportunities. There must be a well defined Process Evaluation, and an Outcome Evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, i.e., a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected, and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, in order to assure that data necessary for the evaluation will be collected and available.

E. Economic Development Strategy

As noted above, the Congress, in the Conference Report on the FY 1992 appropriation, directed ACF to require economic development strategies as part of the application process for JOLI to ensure that highly qualified organizations participate in the demonstration. Accordingly, applicants must include in their proposal an explanation of how the proposed project is integrated with and supports a larger economic development strategy within the target community. Where appropriate, applicants should document how they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan, such as that required for applying for Empowerment Zones/Enterprise Community (EZ/EC) status, to achieve both economic and human development in an integrated manner, and how the proposed project supports the goals of that plan. (See Part IV, Sub-Element III(b).)

F. Training and Support for Micro-Business Development

In the case of proposals for creating self-employment micro-business opportunities for eligible participants, the applicant must detail how it will provide training and support services to potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum: (1) Technical assistance in basic business planning and management concepts, (2) assistance in preparing a business plan and loan application, and (3) access to business loans.

G. Support for Noncustodial Parents

Last November, the Office of Community Services and the Office of Child Support Enforcement, both in the Administration for Children and Families, signed a Memorandum of Understanding (MOU) to foster and enhance partnerships between OCS grantees and local Child Support Enforcement (CSE) agencies. (See Attachment N for the list of CSE State Offices that can identify local CSE agencies) In the words of the MOU:

> The purpose of these partnerships will be to develop and implement innovative strategies in States and local communities to increase the capability of low-income parents and families to fulfill their parental responsibilities. Too many low-income parents are without jobs or resources needed to support their children. A particular focus of these partnerships will be to assist low-income, noncustodial parents of children receiving Temporary Assistance for Needy

Families to achieve a degree of self-sufficiency that will enable them to provide support that will free their families of the need for such assistance." Accordingly, a rating factor and a review criterion have been included in this Program Announcement which will award two points to applicants who have entered into partnership agreements with their local CSE agency to provide for referrals to their project in accordance with provisions of the OCS–OCSE MOU. (See Part IV, Sub-Element III(c))

H. Technical Assistance to Employers

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves in areas such as job-readiness, literacy and other basic skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as to the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses to create the planned jobs must be included with the application.

I. Applicant Experience and Cost-per-Job

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people. Favorable consideration also will be given to those applicants who show the lowest cost-per-job created for low-income individuals. For this program, OCS views $15,000 in OCS funds as the maximum amount for the creation of a job and, unless there are extenuating circumstances, will not fund projects where the cost-per-job in OCS funds exceeds this amount. Only those jobs created and filled by low-income people will be counted in the cost-per-job formula. (See Part IV, Sub-Element III(d).)

J. Loan Funds

The creation of a revolving loan fund with funds received under this program is an allowable activity. However, OCS encourages the use of funds from other sources for this purpose. Points will be awarded in the review process to those applicants who leverage funds from other sources. (See Part IV, Element V.) Loans made to eligible beneficiaries for business development activities must be at or below market rate.

Note: Interest accrued on revolving loan funds may be used to continue or expand the activities of the approved project.

K. Dissemination of Project Results

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $2,000 for dissemination purposes. Final Project Reports should include a description of dissemination activities with copies of any materials produced.

L. General Projects 1.0 and Community Development Corporations Set-Aside 2.0

The Office of Community Services expects to award approximately $5 million by September 30, 1997 for new grants under this announcement: $4 million for General Projects 1.0, and $1 million set-aside for Community Development Corporations 2.0. (For definition of Community Development Corporation, See Part I, Section B.)

The same purposes, requirements and prohibitions are applicable to proposals submitted under both General Projects 1.0. and Community Development Corporations Set-Aside 2.0.

Applications for the set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

Part IV—Application Elements and Review Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth assessment and review process will use the following criteria coupled with the specific requirements described in Part III. Scoring will be based on a total of 100 points.

The ultimate goals of the projects to be funded under the JOLI Program are: (1) To achieve, through project activities and interventions, the creation of employment opportunities for TANF recipients and other low-income individuals which can lead to economic self-sufficiency of members of the communities served; (2) to evaluate the effectiveness of these interventions and of the project design through which they were implemented; and (3) thus to make possible the replication of successful programs. As noted here, OCS intends to make the awards of all the above grants on the basis of brief, concise applications. The elements and format of these applications, along with the review criteria that will be used to evaluate them, will be outlined in this Part.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding. Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that the overall Project Narrative cannot be longer than 30 pages.

The competitive review of proposals will be based on the degree to which applicants:

(1) Incorporate each of the Elements and Sub-Elements below into their proposals, so as to:

(2) Describe convincingly a project that will develop new employment or business opportunities for AFDC recipients and other low income individuals that can lead to a transition from dependency to economic self-sufficiency;

(3) Propose a realistic budget and time frame for the project that will support the successful implementation of the work plan to achieve the project's goals in a timely and cost effective manner; and

(4) Provide for the testing and evaluation of the project design, implementation, and outcomes so as to make possible replication of a successful program.

Element I: Organizational Experience in Program Area and Staff Skills, Resources and Responsibilities

(Total Weight of 0–20 points in proposal review.)

Sub Element I(a). Agency's Experience and Commitment in Program Area (Weight of 0–10 points in proposal review)

Applicants should cite their organization's capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. They

should also cite the organization's experience in collaborative programming and operations which involve evaluations and data collection. Applicants should identify agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation.

The application should include documentation which briefly summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. The application should note and justify the priority that this project will have within the agency including the facilities and resources that it has available to carry it out.

It is suggested that applicants use no more than 2 pages for this Sub-Element.

Note: The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.

Sub Element I(b). Staff Skills, Resources and Responsibilities

(Weight of 0–10 points in proposal review)

The application must identify the two or three individuals who will have the key responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the Executive Officials of the organization and the key staff persons who will administer and implement the project. The person identified as Project Director should have supervisory experience, experience in finance and business, and experience with the target population. Because this is a demonstration project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

The application must also include a résumé of the third party evaluator, if identified or hired; or the minimum qualifications and a position description for the third-party evaluator, who must be a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. (See Element IV, Project Evaluation, below, for fuller discussion of Evaluator qualifications.)

Actual résumés of key staff and position descriptions should be included in an Appendix to the proposal.

It is suggested that applicants use no more than 3 pages for this Sub-Element.

Element II. Project Theory, Design, and Plan

(Total Weight of 0–30 points in proposal review.)

OCS seeks to learn from the application why and how the project as proposed is expected to lead to the creation of new employment opportunities for low-income individuals which can lead to significant improvements in individual and family self-sufficiency.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework. In the following paragraphs a framework is described that suggests a way to present a project so as to show the logic of the cause-effect relations between project activities and project results. Applicants don't have to use the exact language described; but it is important to present the project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve.

Sub-Element II(a). Description of Target Population, Analysis of Need, and Project Assumptions

(Weight of 0–10 points in application review.)

The project design or plan should begin with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built. The assumptions about the needs of the population to be served; about the current services available to that population, and where and how they fail to meet their needs; about why the proposed services or interventions are appropriate and will meet those needs; and about the impact the proposed interventions will have on the project participants.

In other words, the underlying assumptions of the program are the applicant's analysis of the needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those needs and problems to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes of those problems.

In this sub-element of the proposal the applicant must precisely identify the target population to be served. The geographic area to be impacted should then be briefly described, citing the percentage of residents who are low-income individuals and TANF recipients, as well as the unemployment rate, and other data that are relevant to the project design.

The application should include an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the population to be targeted by the project. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, lack of suitable clothing or equipment, or poor self-image.) Application also includes an analysis of the identified community systemic barriers which the project will seek to overcome. These might include lack of jobs (high unemployment rate); lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, child care, job training); high incidence of crime; inadequate health care; or environmental hazards (such as toxic dumpsites or leaking underground tanks). Applicants should be sure not to overlook the personal and family services and support that might be needed by project participants *after* they are on the job which will enhance job retention and advancement. If the jobs to be created by the proposed project are themselves designed to fill one or more of the needs, or remove one or more of the barriers so identified, this fact should be highlighted in the discussion (e.g. jobs in childcare, health care, or transportation).

It is suggested that applicants use no more than 4 pages for this Sub-Element.

Sub-Element II(b). Project Strategy and Design: Interventions, Outcomes, and Goals

(Weight of 0–10 points in proposal review.)

The work plan must describe the proposed project activities, or interventions, and explain how they are expected to result in outcomes which will meet the needs of the program participants and assist them to overcome the identified personal and systemic barriers to employment, job retention and self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist in the creation of employment and business opportunities for program participants in the face of the needs and problems that have been identified.

The underlying assumptions concerning client needs and the theory of how they can be effectively

addressed, which are discussed above, lead in the project design to the conduct of a variety of project activities or interventions, each of which is assumed to result in immediate changes, or outcomes.

The immediate changes lead to intermediate outcomes; and the intermediate outcomes lead to the final project goals.

The applicant should describe the major activities, or interventions, which are to be carried out to address the needs and problems identified in Sub-Element II(a); and should discuss the immediate changes, or outcomes, which are expected to result. These are the results expected from each service or intervention immediately after it is provided. For example, a job readiness training program might be expected to result in clients having increased knowledge of how to apply for a job, improved grooming for job interviews, and improved job interview skills; or business training and training in bookkeeping and accounting might be expected to result in project participants making an informed decision about whether they were suited for entrepreneurship.

At the next level are the intermediate outcomes which result from these immediate changes. Often an intermediate project outcome is the result of several immediate changes resulting from a number of related interventions such as training and counseling. Intermediate outcomes should be expressed in measurable changes in knowledge, attitudes, behavior, or status/condition. In the above examples, the immediate changes achieved by the job readiness program, coupled with technical assistance to an employer in the expansion of a business could be expected to lead to intermediate outcomes of creation of new job openings and the participant applying for a job with the company. The acquisition of business skills, coupled with the establishment of a loan fund, could be expected to result in the actual decision to go into a particular business venture or seek the alternative track of pursuing job readiness and training.

Finally, the application should describe how the achievement of these intermediate outcomes will be expected to lead to the attainment of the project goals: Employment in newly created jobs, new careers in non-traditional jobs, successful business ventures, or employment in an expanded business, depending on the project design. Applicants must remember that if the major focus of the project is to be the development and start-up of a new business or the expansion of an existing business, then a Business Plan which follows the outline in Attachment L to this announcement must be submitted as an Appendix to the Proposal.

Applicants don't have to use the exact terminology described above, but it is important to describe the project in a way that makes clear the expected cause-and-effect relationship between what the project plans to do—the activities or interventions, the changes that are expected to result, and how those changes will lead to achievement of the project goals of new employment opportunities and greater self-sufficiency. The competitive review of this Sub-Element will be based on the extent to which the application makes a convincing case that the activities to be undertaken will lead to the projected results.

It is suggested that applicants use no more than 4 pages for this Sub-Element.

Sub-Element II(c). Work Plan

(Weight of 0–10 points in proposal review)

Once the project strategy and design framework are established, the applicant should present the highlights of a work plan for the project. The plan should explicitly tie into the project design framework and should be feasible, i.e., capable of being accomplished with the resources, staff, and partners available. The plan should briefly describe the key project tasks, and show the timelines and major milestones for their implementation. Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems. The plan should be presented in such a way that it can be correlated with the budget narrative included earlier in the application.

Applicant may be able to use a simple Gantt or time line chart to convey the work plan in minimal space.

It is suggested that applicants use no more than 3 pages for this Sub-Element.

Element III. Significant and Beneficial Impact

(A total weight of 0–20 points in proposal review.)

Sub-Element III(a). Quality of Jobs/ Business Opportunities

(Weight of 0–10 points in proposal review.)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead welfare recipients from welfare dependency toward economic self-sufficiency. Results are expected to be quantifiable in terms of: The creation of permanent, full-time jobs; the development of business opportunities; the expansion of existing businesses; or the creation of non-traditional employment opportunities. In developing business opportunities and self-employment for TANF recipients and low-income individuals the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package.

The application should document that:

—The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/ or

—Jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency. For example, they should provide salaries that exceed the minimum wage, plus benefits such as health insurance, child care and career development opportunities.

It is suggested that applicants use no more than 3 pages for this Sub-Element.

Sub-Element III(b). Community Empowerment Consideration

(Weight of 0—3 points in proposal review.)

Special consideration will be given to applicants who are located in areas which are characterized by conditions of extreme poverty and other indicators of socio-economic distress such as a poverty rate of at least 20%, designation as an Empowerment Zone or Enterprise Community, high levels of violence, gang activity or drug use. Applicants should document that in response to these conditions they have been involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner; and how the proposed project will support the goals of that plan.

It is suggested that applicants use no more than 2 pages for this Sub-Element.

Sub-Element III(c). Support for Noncustodial Parents

(Weight of 0–2 points in proposal review.)

Applicants who have entered into partnership agreements with local Child Support Enforcement Agencies to develop and implement innovative

strategies to increase the capability of low-income parents and families to fulfill their parental responsibilities; and specifically, to this end, to provide for referrals to the funded projects of identified income eligible families and noncustodial parents economically unable to provide child support, will also receive special consideration.

To receive the full credit of two points, applicants should include as an attachment to the application, a signed letter of agreement with the local CSE Agency for referral of eligible noncustodial parents to the proposed project.

It is suggested that applicants use no more than 1 page for this Sub-Element.

Sub-Element III(d). Cost-per-Job

(Weight of 0–5 points in proposal review)

The Application should document that during the project period the proposed project will create new, permanent jobs through business opportunities or non-traditional employment opportunities for low-income residents at a cost-per-job below $15,000 in OCS funds. The cost per job should be calculated by dividing the total amount of grant funds requested (e.g. $420,000) by the number of jobs to be created (e.g. 60) which would equal the cost-per-job ($7,000)). If any other calculations are used, include the methodology and rationale in this section. In making calculations of cost-per-job, only jobs filled by low-income project participants may be counted. (See Part III, Section I.)

Note: Except in those instances where independent reviewers identify extenuating circumstances related to business development activities, the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.

It is suggested that applicants use no more than 1 page for this Sub-Element.

Element IV. Project Evaluation

(Weight of 0–15 points in the proposal review)

Sound evaluations are essential to the JOLI Program. OCS requires applicants to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented (the Process Evaluation) and whether the project activities, or interventions, achieved the expected outcomes and goals of the project, and what those outcomes were (the Outcome Evaluation). Together, the Process and Outcome Evaluations should answer the question "why did this program work/not work?".

Applicants are not being asked to submit a complete and final Evaluation Plan as part of their proposal; but they must include:

(1) A well thought through outline of an evaluation plan which identifies the principal cause-and-effect relationships to be tested, and which demonstrates the applicant's understanding of the role and purpose of both Process and Outcome Evaluations (see previous paragraph);

(2) The identity and qualifications of the proposed third-party evaluator, or if not selected, the qualifications which will be sought in choosing an evaluator, which must include successful experience in evaluating social service delivery programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low income populations; and

(3) A commitment to the selection of a third-party evaluator approved by OCS, and to completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS Evaluation Technical Assistance Contractor during the six-month start-up period of the project, if funded.

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target populations and their needs, and the hypotheses, or expected cause-effect relationships to be tested in the project: That the proposed project activities, or interventions, will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, and the community.

For these reasons it is important that each successful applicant have a third-party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, and in order to assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third-party evaluator must have knowledge about and have experience in conducting process and outcome evaluations in the job creation field, and have a thorough understanding of the range and complexity of the problems faced by the target population.

The competitive procurement regulations (45 CFR Part 74, Sections 74.40–74.48, esp. 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than 3 pages for this proposal Element, plus the Résumé or Position Description for the evaluator, which should be in an Appendix.

Element V. Public-Private Partnerships

(Weight of 0–10 points in the proposal review.)

The proposal should briefly describe the public-private partnerships which will contribute to the implementation of the project. Where partners' contributions to the project are a vital part of the project design and work program, the narrative should describe undertakings of the partners, and a partnership agreement, specifying the roles of the partners and making a clear commitment to the fulfilling of the partnership role, must be included in an Appendix to the Proposal. The firm commitment of mobilized resources must be documented and submitted with the Application in order to be given credit under this Element. The application should meet the following criteria:

—All JOLI applications must include a signed cooperative partnership agreement with the designated State Agency responsible for administering the TANF Program, or a letter of commitment to such an agreement within six months of a grant award, contingent only on receipt of OCS funds. This cooperative partnership agreement must fully describe the activities and services to be provided which must clearly relate to the objectives of the proposed project.

—The application should provide documentation that public and/or private sources of cash and/or third-party in-kind contributions will be available, in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Applications that can document dollar for dollar contributions equal to the OCS funds and demonstrate that the partnership agreement clearly relates to the objectives of the proposed project, will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented. (Note: Even though there is no matching requirement for

the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part II, D. Mobilization of Resources)

—Partners involved in the proposed project should be responsible for substantive project activities and services. Applicants should note that partnership relationships are not created via service delivery contracts.

It is suggested that applicants use no more than 4 pages for this Proposal Element.

Element VI. Budget Appropriateness and Reasonableness

(Weight of 0–5 points in proposal review.)

Applicants are required to submit Federal budget forms with their proposals to provide basic applicant and project information (SF 424) and information about how Federal and other project funds will be used (424A). (See Part VI) Immediately following the completed Federal budget forms, (Attachments B, C and D) applicants must submit a Budget Narrative, or explanatory budget information which includes a detailed budget break-down for each of the budget categories in the SF–424A. This Budget Narrative is not considered a part of the Project Narrative, and does not count as part of the thirty pages; but rather is included in the application following the budget forms. (Attachments B, C, and D)

The duration of the proposed project and the funds requested in the budget must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The budget narrative should briefly explain how grant funds will be expended and show the appropriateness of the Federal funds and any mobilized resources to accomplish project purposes within the proposed timeframe. The estimated cost to the government of the project should be reasonable in relation to the project's duration and to the anticipated results, and include reasonable administrative costs, if an indirect cost rate has not been negotiated with the cognizant Federal agency.

Resources in addition to OCS grant funds are encouraged both to augment project resources and to strengthen the basis for continuing partnerships to benefit the target community. The amounts of such resources, their appropriateness to the project design, and the likelihood that they will continue beyond the project time frame will be taken into account in judging the application. As noted in Element V, above, even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application.

Applicants should include funds in the project budget for travel by Project Directors and Chief Evaluators to attend two national evaluation workshops in Washington, D.C. (See Part VIII, Evaluation Workshops.)

THE SCORE FOR THIS ELEMENT WILL BE BASED ON THE BUDGET FORM (SF–424A) AND THE ASSOCIATED DETAILED BUDGET NARRATIVE.

Part V—Application Procedures and Selection Process

A. Availability of Forms

Attachment C contains all of the standard forms necessary for the application for awards under this OCS program. These forms may be photocopied for the application. This Announcement and the attachments to it contain all of the instructions required for submittal of applications.

Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. This Announcement is also accessible on the Internet through GPO Access at the web address listed at the beginning of this Announcement under **FOR FURTHER INFORMATION CONTACT.**

If copies are not available at these sources, you may write or telephone the office listed at the beginning of this Announcement under the same heading.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, debarment regulations and the Certification Regarding Environmental Tobacco Smoke, set forth in Attachments E, F and J.

Part IV contains instructions for the substance and development of the project narrative. Part VII, Section A describes the contents and format of the application as a whole.

B. Application Submission

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date indicated at the beginning of this Announcement under "Closing Date". Applications received after 4:30 p.m. on that date will be classified as late. Applications once submitted are considered final and no additional materials will be accepted.

Number of Copies: One signed original application and four copies should be submitted at the time of initial submission. (OMB–0970–0062)

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children, and Families, Office of Program Support, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447; Attention: Application for JOLI Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Room, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadline: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number OMB–0970–0062.

D. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has sixty (60) days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G to this Announcement.

E. Application Consideration

Applications that meet the screening requirements below will be reviewed competitively. Such applications will be referred to reviewers for numerical scoring and explanatory comments based solely on responsiveness to the guidelines and evaluation criteria published in this Announcement.

Applications will be reviewed by persons outside of the OCS unit. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; the limitations on project continuation or refunding (see Part II, Section H); the number of previous JOLI grants made to applicant; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

In grant programs where non-Federal reviewers are used to evaluate applications, applicants may omit, from the application copies which will be made available to the non Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

F. Criteria for Screening Applications

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applications:

a. The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part VI and Attachment C and D, of this Program Announcement.

b. A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 pages, typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (cpi) or equivalent. The Budget Narrative, Charts, exhibits, resumes, position descriptions, letters of support, Cooperative Agreements, and Business Plans (where required) are not counted against this page limit. IT IS STRONGLY RECOMMENDED THAT APPLICANTS FOLLOW THE FORMAT AND CONTENT FOR THE NARRATIVE SET OUT IN PART IV.

c. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

d. Application must contain documentation of the applicant's tax exempt status as required under Part II, Section A.

Part VI—Instructions for Completing the SF–424

(Approved by the Office of Management and Budget under Control Number 0970–0062.)

The standard forms attached to this Announcement shall be used to apply for funds under this Program Announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B and C) as modified by the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

A. SF–424—Application for Federal Assistance

Top of Page. Please enter the single priority area number under which the application is being submitted (1.0 or 2.0). An application should be submitted under only one priority area.

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this Announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. Enter N in the box and specify non-profit corporation on the line marked Other.

Item 9. Name of Federal Agency—Enter HHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this Announcement is *93.593*. The title is "Job Opportunities for Low-Income Individuals Program".

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

JO—General Project
JS—Community Development Corporation Set-Aside

Item 13. *Proposed Project*—The ending date should be based on the requested project period, not to exceed five years (60 months).

Item 15a. This amount should be no greater than $500,000.

Item 15b-e. These items should reflect both cash and third-party, in-kind contributions for the three year budget period requested.

B. SF–424A—Budget Information—Non-Construction Programs

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in "Non-Federal" entries.

Sections A, B, and C of SF–424A should reflect budget estimates for each year of the budget period for which funding is being requested (one, two, or three years, as appropriate).

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts) Col. (a): Enter Job Opportunities for Low-Income Individuals Program. Col. (b): Catalog of Federal Domestic Assistance number is *93.593*.

Col. (c) and (d): Not relevant to this program.

Column (e)–(g): Enter the appropriate amounts (column e should not be more than $500,000.)

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form SF–424A in Attachment C.) *Columns (1)–(5):* For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the first year;

Column 2: Enter the OCS grant funds for the second year (where appropriate);

Column 3: Enter the OCS grant funds for the third year (where appropriate);

Column 4: Leave blank.

Column 5: Enter the total federal OCS grant funds for the total budget period by Class Categories, showing a total budget of not more than $500,000.

Note: With regard to Class Categories, only out-of-town travel should be entered under Category c. Travel. Local travel costs should be entered under Category h. Other. Equipment costing less than $5000 should be included in Category e. Supplies.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of these "non-Federal" resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Public-Private Partnerships program element.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. (Note: Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Element V.)

This Section should be completed in accordance with the instructions provided.

Sections D, E, and F may be left blank.

A supporting Budget Narrative must be submitted providing details of expenditures under each budget category, and justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project. (See Part IV, Element VI)

C. SF–424B Assurances-Non-Construction

All applicants must fill out, sign, date and return the "Assurances" with the application. (See Attachment D.)

Part VII—Contents of Application and Receipt Process

A. Contents of Application

Each application submission should include a signed original and four additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally; (Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization.)

3. Budget Information-Non-Construction Programs—(SF–424A);

4. A narrative budget justification for each object class category required under Section B, SF–424A;

5. Certifications and Assurance Required for Non-construction Programs, as follows:

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs". Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. Copies of the certifications and assurance are located at the end of this Announcement.

6. Certification Regarding Environmental Tobacco Smoke—Signature on the application attests to the applicants intent to comply with the requirements of the Pro-Children Act of 1994 (no signature required on form).

7. An Executive Summary—not to exceed 300 words;

8. A Project Narrative of no more than 30 pages, consisting of the Elements described in Part IV of this Announcement set forth in the order there presented; preceded by a consecutively numbered Table of Contents (not to be counted as part of the 30 pages).

9. Appendices—proof of non-profit tax-exempt status as outlined in Part II, Section A; proof that the organization is a community development corporation, if applying under the CDC Set-aside; commitments from officials of businesses that will be expanded or franchised, where applicable; partnership agreement with the designated State TANF agency and CSE agency; Single Point of Contact comments, if applicable; resumes and position descriptions; a Business Plan, where required; and the Maintenance of Effort Certification (See Part II–J and Attachment M).

The total number of pages for the narrative portion of the application package must not exceed 30 pages, excluding Appendices and Narrative Table of Contents.

Pages should be numbered sequentially throughout, including Appendices, beginning with the SF 424 as Page 1.

The application may also contain letters that show collaboration or substantive commitments to the project by organizations other than the designated TANF agency. Such letters are not part of the narrative and should be included in the Appendices. These letters are, therefore, not counted against the 30 page limit.

B. Application Format

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8 ½ X 11 inch paper only. Applications must not include colored, oversized or folded materials. Applications should not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. Such materials will not be reviewed and will be discarded if included.

Applications must not be bound or enclosed in loose-leaf binder notebooks. Preferably, applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip.

C. Acknowledgement of Receipt

Applicants who meet the initial screening criteria outlined in Part V, Section E, 1, will receive within ten days after the deadline date for submission of applications, an acknowledgement with an assigned identification number.

Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement notice. This mailing label should reflect the mailing address of the authorizing official who is applying on behalf of the organization. This number and the program letter code, i.e., JO or JS, must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9234.

Part VIII—Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

B. Attendance at Evaluation Workshops

Project directors and chief evaluators will be required to attend two national evaluation workshops in Washington, DC. A three-day program development and evaluation workshop will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, the final three-day evaluation workshop on utilization and dissemination to be held at the end of the project period. Project budgets must include funds for travel to and attendance at these workshops. (See Part IV, Element VI, Budget Appropriateness and Reasonableness.)

C. Reporting Requirements

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) as well as a final program progress and financial report within 90 days of the expiration of the grant. An annual evaluation report will be due 30 days after each twelve months. A written policies and procedures manual based on the findings of the process evaluation should be submitted along with the first annual evaluation report. A final evaluation report will be due 90 days after the expiration of the grant.

D. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-profit organization) and OMB Circular A–133.

E. Prohibitions and Requirements with regard to Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or

$150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

F. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Job Opportunities for Low-Income Individuals Program.

Dated: May 1, 1997.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A

Size of family unit	Poverty guidelines
1997 Poverty Income Guidelines for the 48 Contiguous States and the District of Columbia	
1	$7,890
2	10,610
3	13,330
4	16,050
5	18,770
6	21,490
7	24,210
8	26,930
For family units with more than 8 members, add $2,720 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1997 Poverty Income Guidelines for Alaska	
1	9,870
2	13,270
3	16,670
4	20,070
5	23,470
6	26,870
7	30,270
8	33,670
For family units with more than 8 members, add $3,400 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	
1997 Poverty Income Guidelines for Hawaii	
1	9,070
2	12,200
3	15,330
4	18,460
5	21,590
6	24,720
7	27,850
8	30,980
For family units with more than 8 members, add $3,130 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)	

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Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):	

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the spaces(s) provided:

—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use of the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities.)

13. Self-explanatory.

14. List of applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

Attachment C

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

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SECTION C -- NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E -- BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F -- OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case. Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount of Line 5. Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D—Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send

comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duty authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award: and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (19 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act to 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1919 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights At of 1968 (42 U.S.C. § 360 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; an (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirement of Titles II and III of the Uniform Relocation Assistance an Real Property Acquisition Policies Act of 1970 (Pub .L. 91–646 which provide for fair and equitable treatment of person displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purpose regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal action to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended. (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the award agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research teaching, or other activities supported by this award of assistance.

16. Will comply with the lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal Laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment E

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE–WIDE AND STATE AGENCY–WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Managment and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which

reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate I applies.

4. For grantees who are individuals. Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substances means a controlled substance in Schedule I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contenaere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distibuiton, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g.), volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub recipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to an including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matter—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary

covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G—OMB State Single Point of Contact Listing; September 1996

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. Dev., 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX (312) 814–1800

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street, Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640,

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411. Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capitol, Room 124, Cheyenne, WY 82002, Telephone: (307) 777–5930, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office

of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272. Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

Attachment H—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

Attachment H

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For material change only Year_____ Quarter_____ date of last report_____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Attachment I—Department of Health & Human Services, Administration for Children and Families, Office of Family Assistance, Washington, DC 20447

Jobs Program Directory

Alabama

Claire Ealy, Director, Office of Work and Training Services, Family Assistance, S. Gordon Persons Building 50 Ripley Street, Montgomery, Alabama 36130, (334) 242–1950 Fax, (334) 242–1086

Alaska

Val Horner, JOBS Program Officer, Division of Public Assistance, Department of Health and Social Services, P.O. Box 110640, Juneau, Alaska 99811–0640, (907) 465–5844 Fax (907) 456–5154

Arizona

Gretchen Evans, Administrator, JOBS/Food Stamp Employment and Training Administration, Dept. of Economic Security, P.O. Box 6123–710A, Phoenix, Arizona 85005, (602) 542–5954, Fax (602) 542–6310

Arkansas

Debbie Bousquet, Manager, Project SUCCESS, Department of Human Services, P.O. Box 1437, Mail Slot 1230, Little Rock, Arkansas 72203, (501) 682–8264, Fax (501) 682–1469

California

William Jordan, Acting Chief, Employment & Immigrations Programs Branch, Department of Social Services, 744 P Street M/S 6–700, Sacramento, California 95814, (916) 657–3442, Fax (916) 654–1516

Colorado

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Attachment J—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment K—DHHS Regulations Applying to All Applicants/ Grantees Under the Job Opportunities for Low-Income Individuals (JOLI) Program

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants and sub-grants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86 Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment L—Business Plan

The business plan is one of the major components that will be evaluated by OCS to determine the feasibility of a jobs creation project. A business plan must be included if, the applicant is proposing to establish a new identificated business, or if the applicant will be providing assistance to a private third-party employer for the development or expansion of a pre-identified business.

The following guidelines were written to cover a variety of possibilities regarding the requirements of a business plan. Rigid adherence to them is not possible nor even desirable for all projects. For example, a business plan for a service business would not require discussion of manufacturing nor product designs. Therefore, the business plans should be prepared in accordance with the following guidelines:

1. *The business and its industry.* This section should describe the nature and history of the business and include background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry.

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold;

b. *Proprietary Position:* Describe proprietary features, if any, of the product, e.g. patents, trade secrets; and,

c. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment;

b. *Market Size and Trends:* State the size of the current total market for the product or service offered;

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services; and,

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market.

4. *Marketing Plan:* The marketing plan must describe what is to be done, how it will be done and who will do it. The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* This section of the plan should cover items such as Development Status, Tasks, Difficulties and Risks, Product Improvement, New Products and Costs. If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and, supporting professional services. The management team is key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in operating the proposed business.

8. *Overall Schedule:* This section must include a month-by-month schedule that shows the timing of such major events, activities and accomplishments involving product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the correlation between the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* This section should include a description of the risks and critical assumptions/problems relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture. Identify and discuss the critical assumptions/problems to overcome in the Business Plan. Major problems must clearly identify problems to be solved to develop the venture.

10. *Community Benefits:* The applicant should describe how the proposed project will contribute to the local economy, community and human economic development within the project's target area.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency of the business. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts-quarterly for each year;

b. Cash Flow Projections-quarterly for each year;

c. Pro forma balance sheets-quarterly for each year;

d. Initial sources of project funds;

e. Initial uses of project funds; and

f. Any future capital requirements and sources.

12. *Facilities.* If rearrangement or alteration of existing facilities is required to implement the project, the applicant must describe and justify such changes and related costs.

Attachment M—Certification Regarding Maintenance of Effort

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under the Job Opportunities for Low-Income Individuals Program by _____, will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Date

Attachment N—Updated—February 6, 1997

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David Vela, Director, Child Support Division, Office of the Attorney General, P.O. Box 12017, Austin, TX 78711–2017, (Street Address: 5500 East Oltorf, Rm 37, Austin, TX 78704), Phone (512) 460–6000 ext. 2700, FAX: (512) 479–6478

Utah

James Kidder, Director, Bureau of Child Support Services, Department of Human Services, P.O. Box 45011, Salt Lake City, UT 84145–0011, (515 East, 100 South, Salt Lake City, UT 84145–0011), Phone (801) 536–8911, FAX: (801) 536–8509

Vermont

Jeffery Cohen, Director, Office of Child Support, 103 South Main Street, Waterbury, VT 05671–1901, Phone (802) 241–2319, FAX: (802) 244–1483

Virgin Islands

Aurjul Wilson, Director, Paternity and Child Support Division, Department of Justice, GERS Building, 2nd Floor, 48B–50C Krondprindsens Gade, St. Thomas, VI 00802, Phone (809) 775–3070, FAX: (809) 775–3808

Virginia

Joseph S. Crane, Interim Director, Division of Child Support Enforcement,Department of Social Services, 730 East Broad Street, Richmond; VA 23219, Phone (804) 692–1501, FAX: (804) 692–1543

Washington

Meg Sollenberger, Director, Division of Child Support, DSHS, P.O. Box 9162, Olympia, WA 98507–9162, (Street Address: 712 Pear St., SE, Olympia, WA 98507), Phone (360) 586–3520, FAX: (360) 586–3274

West Virginia

Jeff Matherly, Acting Director, Child Support Enforcement Division, Department of Health & Human Resources, Building 6, Room 817, State Capitol Complex, Charleston, WV 25305, Phone (304) 558–3780, FAX: (304) 558–2059

Wisconsin

Mary Southwick, Director, Bureau of Child Support, Division of Economic Support, P.O. Box 7935, Madison, WI 53707–7935, (Street Address: 1 West Wilson Street, Room 382, Madison, WI 53707), Phone (608) 266–9909, FAX: (608) 267–2824

Wyoming

James Mohler, Program Manager, Child Support Enforcement Program, Department of Family Services, Hathaway Building, 2300 Capital Avenue, Cheyenne, WY 82002–0710, Phone (307) 777–6948, FAX: (307) 777–3693

[FR Doc. 97–11752 Filed 5–6–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Cancellation of Meeting Panel

Notice is hereby given that the meeting of the President's Cancer Panel, National Cancer Institute, National Institutes of Health, scheduled for May 22, 1997 and published in the **Federal Register** (62 FR 19124) on April 18, 1997 is hereby canceled due to scheduling conflicts.

Dated: May 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11891 Filed 5–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, May 29, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on May 29 from 8:30 a.m. to approximately 12:00 p.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 1:00 p.m. to adjournment on May 29 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11893 Filed 5–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 6, 1997, in Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland, 20892–2425. This meeting will be open to the public from 8:00 a.m. to 12 noon on June 6 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 6 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, Area Code 301, 496–2133, will provide a summary of the meeting and a roster of Board members and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: May 01, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11892 Filed 5–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, May 29–30, 1997, Omni Shoreham Hotel, 2500 Calvert Street, Washington, D.C.

The meeting will be open to the public from 8:00 a.m. to 6:00 p.m. on May 29 and 8:00 a.m. to adjournment on May 30. Attendance by the public will be limited to space available. Board topics will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on program activities of the Center; (3) a discussion of general priority areas of research for the Center; (4) a discussion of support for medical rehabilitation research by government agencies; and (5) other medical rehabilitation activities.

Ms. Melanie Showe, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Showe.

Dated: May 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11894 Filed 5–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: to review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: May 14, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5192, Telephone Conference.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

Name of SEP: Biological and Physiological Sciences.

Date: May 16, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: June 11–13, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.

Date: June 17, 1997.

Time: 8:30 a.m.

Place: Courtyard by Marriott, Gaithersburg, Maryland.

Contact Person: Dr. Mustaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

Name of SEP: Chemistry and Related Sciences.

Date: June 18, 1997.

Time: 8:00 a.m.

Place: Westin Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.

Name of SEP: Multidisciplinary Sciences.

Date: June 24–24, 1997.

Time: 8:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Biological and Physiological Sciences.

Date: June 24, 1997.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Name of SEP: Behavioral and Neurosciences.

Date: June 25–27, 1997.
Time: 8:00 a.m.
Place: Carlton Hotel, Washington, DC.
Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

Name of SEP: Microbiological and Immunological Sciences.
Date: June 27, 1997.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Multidisciplinary Sciences.
Date: June 9, 1997.
Time: 8:00 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda, Maryland 20892, (301) 435–1179.

Name of SEP: Chemistry and Related Sciences.
Date: June 16–17, 1997.
Time: 8:00 a.m.
Place: Ana Hotel, Washington, DC.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.

Name of SEP: Multidisciplinary Sciences.
Date: June 30–July 2, 1997.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, Maryland.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.
Date: July 7–8, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.
Date: July 10–11, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: July 14–15, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11890 Filed 5–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in May 1997.

The meeting will be open and include a panel discussion on the interconnectedness of the substance abuse and HIV epidemics from a national HIV prevention policy perspective as well as a personal perspective; discussion on HHS's and SAMHSA's HIV/AIDS prevention and treatment programs; and a reaction panel to respond to the issues raised concerning substance abuse and HIV/AIDS. There will also be followup discussions to the Joint Council meeting; on parity for alcohol, drug abuse and mental health services; on implications of welfare reform for populations that SAMHSA serves; and on future directions for the Agency's Knowledge Development and Application program. In addition, there will be updates on the Secretary's Initiative on Youth Substance Abuse Prevention, on mental health services and services research activities, and on SAMHSA's managed care activities. Attendance by the public will be limited to space available. Interested persons may present information or views, orally or in writing, on issues pending before the Council. Those desiring to make formal remarks should contact Dr. Mary C. Knipmeyer, Acting Associate Administrator for Policy and Program Coordination, SAMHSA, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857 before May 15, and submit a brief statement of the general nature of the information or arguments they wish to present, the names and addresses of proposed participants, an identification of organizational affiliation, and an indication of the approximate time required to make their comments. Time for presentations may be limited by the number of requests; photocopies may be distributed at the meeting through the Executive Secretary, if provided by May 15.

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.
Meeting Date: May 29, 1997.
Place: Madison Hotel, Drawing Rooms 3 and 4, 15th and M Streets, NW., Washington, DC 20005.
Open: May 29, 1997, 9:00 a.m. to 5:35 p.m.
Contact: Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council, Parklawn Building, Room 12C–15, Rockville, Maryland. Telephone: (301) 443–4640 and FAX: (301) 443–1450.

Dated: May 1, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–11851 Filed 5–6–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4047–N–03]

Announcement of Funding Awards; Fair Housing Initiatives Program FY 1996

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1996 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards

to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Sharon Bower, Special Assistant, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative. This notice announces awards made under the Fair Housing Organizations Initiative, Education and Outreach Initiative, and the Private Enforcement Initiative.

The Department announced on May 24, 1996 (61 FR 26362) the availability of $12,106,000 to be utilized for the Fair Housing Initiatives Program. This Notice announces awards to forty-one organizations that submitted applications under the FY 1996 FHIP NOFA.

The Catalog of Federal Domestic Assistance numbers for the Fair Housing Initiative Program are 14.409, 14.410 and 14.413.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 1996 FHIP NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

Dated: April 29, 1997.

Susan Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

APPENDIX A.—FY 1996 FAIR HOUSING INITIATIVES PROGRAM AWARDS

Applicant name and address	Contact name and phone number	Region	Single or multi-year funding	Amount awarded (dollars)
Fair Housing Organizations Initiative—Continued Development Component				
Housing Opportunities Made Equal of Richmond, Inc., 1218 West Cary Street, Richmond, VA 23220.	Constance Chamberlin, (804) 354–0641 ...	3	S	250,000
National Fair Housing Alliance, 1212 New York Avenue, NW, Ste 525, Washington, DC 20005.	Shanna Smith, (202) 898–1661	3	S	249,935
Fair Housing Council of Greater Washington, 1212 New York Avenue, NW, Ste 500, Washington, DC 20005.	David Berenbaum, (202) 289–5360	3	S	250,000
Baltimore Neighborhoods, Inc., 2217 St. Paul Street, Baltimore, MD 21218.	Joseph Coffey, (410) 243–4400	3	S	212,578
Housing Opportunities for Project Excellence, Inc. (HOPE), 3000 Biscayne Boulevard, Ste 102, Miami, FL .33137.	William Thompson, Jr., (305) 571–8522 ...	4	S	249,997
Metro Fair Housing Services, Inc., P.O. Box 5467, 1083 Austin Avenue, NE, Atlanta, GA 30307.	Foster Corbin, (404) 221–0874	4	S	224,330
Housing Opportunities Made Equal of Greater Cincinnati, Inc., 2400 Reading Road, Room 109, Cincinnati, OH 45202.	Karla Irvine, (513) 721–4663	5	S	250,000
Leadership Council for Metropolitan Open Communities, 401 S. State Street, Ste 860, Chicago, IL 60605.	Aurie Pennick, (312) 341–5678	5	S	249,262
Fair Housing Center of Metropolitan Detroit, 1249 Washington Boulevard, Room 1312, Detroit, MI 48226.	Clifford Schrupp, (313) 963–1274	5	S	239,466
Fair Housing Opportunities of N.W. Ohio, 2116 Madison Avenue, Toledo, OH 43624–1131.	Lisa Rice, (419) 243–6163	5	S	250,000
Montana Fair Housing, Inc., 904–A Kensington, Missoula, MT 59801.	Susan Fifield, (406) 542–2611	8	S	196,486
Truckee Meadows Fair Housing, P.O. Box 3935, Reno, NV 89505.	Katie Copeland, (702) 324–0990	9	S	236,916
Project Sentinel, 430 Sherman Avenue, Palo Alto, CA 94306.	Ann Marquart, (415) 321–6291	9	S	243,438
Education and Outreach Initiative—National Programs Component				
National Fair Housing Alliance, 1212 New York Avenue, NW, Ste 525, Washington, DC 20005.	Shanna Smith, (202) 898–1661	3	S	127,357

APPENDIX A.—FY 1996 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name and address	Contact name and phone number	Region	Single or multi-year funding	Amount awarded (dollars)
Fair Housing Council, 835 West Jefferson Street, Room 100, Louisville, KY 40202.	Galen Martin, (502) 583–3247	4	S	58,306
Education and Outreach Initiative—Regional/Local/Community-Based Component				
Asian Americans for Equality, 111 Division Street, New York, NY 10002.	Christopher Kui, (212) 964–2288	2	S	125,000
Open Housing Center, Inc., 594 Broadway, Suite 608, New York, NY 10012.	Sylvia Kramer, (212) 941–6101	2	S	125,000
Fair Housing Council of Greater Washington, 1212 New York Avenue, Suite 500, Washington, DC 20005.	David Berenbaum, (202) 289–5360	3	S	125,000
Disabilities Law Project, 1901 Law and Finance Building, 429 Fourth Avenue, Pittsburgh, PA 15219.	Mark Murphy, (412) 391–5225	3	S	122,765
Greater Birmingham Fair Housing Center, 2000 1st Avenue North, Suite 529, Birmingham, AL 35203.	Bobby Wilson, (205) 324–0111	4	S	124,942
HOPE Fair Housing Center, 2100 Manchester Road, Suite 1070, Building B, Wheaton, IL 60187.	Bernard Kleina, (630) 690–6500	5	S	125,000
Truckee Meadows Fair Housing, Inc., 652 Tahoe Street, P.O. Box 3935, Reno, NV 89505.	Katherine Copeland, (702) 324–0990	9	S	117,918
Idaho Legal Aid Services, Inc., 310 North Fifth Street, Boise, ID 83702.	Enesto Sanchez, (208) 336–8980	10	S	125,000
Private Enforcement Initiative				
Housing Discrimination Project, Inc., 57 Suffolk Street, Holyoke, MA 01040.	Erin Kemple, (413) 539–9796	1	M	483,653
Community Health Law Project, 7 Glenwood Avenue, East Orange, NJ 07017.	Harold Garwin, (201) 275–1175	2	M	500,000
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07602.	Lee Porter, (201) 489–3552	2	M	500,000
Housing Opportunities Made Equal of Richmond, Inc., 1218 West Cary Street, Richmond, VA 23220.	Constance Chamberlin, (804) 354–0641	3	M	500,000
Tenants' Action Group of Philadelphia, 21 S. 12th Street, 12th Floor, Philadelphia, PA 19107.	Elizabeth Hersh, (215) 575–0707	3	M	499,780
West Tennessee Legal Services, 210 West Main Street, Jackson, TN 38301.	J. Steven Xanthopoulos, (901) 426–1311	4	M	500,000
Access Living of Metropolitan Chicago, 310 South Peoria, Suite 201, Chicago IL 60607.	Rosa Villareal, (312) 226–5900	5	M	371,968
Fair Housing Center of Metropolitan Detroit, 1249 Washington Boulevard, Detroit, MI 48226.	Clifford Schrupp, (313) 963–1274	5	M	443,136
Fair Housing Opportunities of N.W. Ohio, Inc., 2116 Madison Avenue, Toledo, OH 43624–1131.	Lisa Rice, (419) 243–6163	5	M	500,000
The John Marshall Law School, 315 S. Plymouth Court, Chicago, IL 60604–3907.	Robert Johnston, (312) 987–1429	5	M	400,000
The Housing Advocates, Inc., 3214 Prospect Avenue, Cleveland, OH 44115–2600.	Edward Kramer, (216) 391–5444	5	M	494,669
Lawyers' Committee for Better Housing, Inc., 407 S. Dearborn, Suite 1075, Chicago, IL 60605.	Julie Ansell, (312) 347–7600	5	M	225,150
Chicago Lawyers' Committee for Civil Rights Under Law, Inc., 100 N. LaSalle Street, Suite 600, Chicago, IL 60602.	Clyde Murphy, (312) 630–9744	5	M	400,000
South Suburban Housing Center, 2057 Ridge Road, Homewood, IL 60430.	John Petruszak, (708) 957–4674	5	M	400,000
Arkansas Fair Housing Organization, 523 W. 15th Street, Little Rock, AR 72202.	Johnnie Pugh, (501) 374–2114	6	M	499,877
Montana Fair Housing, Inc., 1211 Mount Avenue, Missoula, MT 59801.	Susan Fifield, (406) 542–2611	8	M	490,909
Sentinel Fair Housing, 1611 Telegraph Avenue, Suite 1410, Oakland, CA 94612.	Stephanie Garrabrant-Sierra, (510) 836–2687.	9	M	352,480
Housing Rights, Inc., 3354 Adeline Street, Berkeley, CA 94703.	Wanda Remmers, (510) 658–8766	9	M	350,000

[FR Doc. 97–11785 Filed 5–6–97; 8:45 am]
BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4209–N–02]

Mortgagee Review Board; Administrative Actions

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

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, S.W., Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235), approved December 15, 1989, requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 1997 through April 11, 1997.

1. Barrons Mortgage Corporation, Brea, California

Action: Settlement Agreement that includes: indemnification to the Department for claim losses in connection with seven improperly originated property improvement loans under the HUD–FHA Title I property improvement loan program; payment to the Department of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA Title I program requirements that included: use of alleged false tax returns to qualify borrowers for loans; accepting verifications of employment and W–2 forms containing inconsistent information to qualify borrowers; permitting non-approved brokers to originate loans; accepting insufficient cost estimates; and use of misleading advertising.

2. Comstock Mortgage, Sacramento, California

Action: Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $4,000; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

3. Associate Trust Financial Services, Inc., Camp Springs, Maryland

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Submission of false credit reports to HUD–FHA in connection with the origination of HUD–FHA insured mortgages; and failure to notify HUD–FHA of program violations.

4. Eastwood Mortgage Bankers, Ltd., Jericho, New York

Action: Withdrawal of HUD–FHA mortgagee approval and a proposed civil money penalty of $75,000.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: using alleged fraudulent W–2 forms to verify mortgagors' employment; failure to ensure that mortgagors met their minimum required investment; failure to verify the source and/or adequacy of mortgagors' funds to close; failing to conduct face-to-face interviews with mortgagors; failing to conduct timely quality control reviews; using "strawbuyers" to qualify for FHA insured mortgages; closing loans that were not in accordance with the sales contract; permitting improper third party loan originations by a mortgage broker and paying "kickbacks" to such broker for referrals; submitting HUD–1 Settlement Statements that are not an accurate reflection of the transaction; charging mortgagors unallowable fees; and using incomplete gift letters.

5. Continental Capital Corp., Huntington Station, New York

Action: Proposed Settlement Agreement that would include indemnification to the Department for any claim losses in connection with 14 improperly originated HUD–FHA insured mortgages; corrective action to assure compliance with HUD–FHA requirements; and payment to the Department of a civil money penalty in the amount of $40,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA home mortgage insurance program requirements that included: use of alleged falsified documentation or conflicting information to approve HUD–FHA mortgagors; failure to properly verify the source and/or adequacy of mortgagors' funds used for the downpayment and/or closing costs; closing loans that exceeded HUD–FHA maximum mortgage amounts; submitting loans for insurance endorsement that are in default; failure to adequately verify mortgagor's income; failure to require necessary flood insurance; charging incorrect fees to mortgagors; failure to maintain a Quality Control Plan and perform timely quality control reviews; failure to properly analyze and evaluate mortgagors' credit history; and permitting mortgagors to sign documents in blank.

6. Consumer Home Mortgage, Inc., Melville, New York

Action: Proposed Settlement Agreement that would include: indemnification to the Department for claim losses in connection with 27 improperly originated HUD–FHA insured mortgages; corrective action to assure compliance with HUD–FHA requirements; and payment to the Department of a civil money penalty in the amount of $75,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA home mortgage insurance program violations that included: using alleged false information in originating HUD–FHA mortgage insurance; failure to ensure that mortgagors met their minimum required investment; failure to verify the source of funds for mortgagors' downpayment and/or closing costs; permitting mortgagors to sign documents in blank; adding non-occupant co-mortgagors to loans for the purpose of qualifying the mortgagors.

7. Madison Home Equities, Inc., Lake Success, New York

Action; Proposed Settlement Agreement that would include: indemnification to the Department for claim losses in connection with 31 improperly originated HUD–FHA insured mortgages; corrective action to assure compliance with HUD–FHA requirements; and payment to the

Department of a civil money penalty in the amount of $51,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: failure to properly verify and document the source of mortgagors' funds used for downpayment and closing costs; using unsubstantiated credit given to mortgagors in determining the mortgagors' investment; using alleged false information to originate HUD–FHA insured mortgages; submitting an alleged false property inspection report; miscalculating a mortgagor's required investment; failure to accurately reflect disbursements on HUD–1 Settlement Statements; and failure to establish, maintain, and implement a Quality Control Plan in compliance with HUD–FHA requirements.

8. Mortgagees and Title I Lenders That Failed To Comply With HUD–FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD–FHA mortgagee approval and Title I lender approval.

Cause: Failure to submit to the Department the required annual audited financial statement and/or remit the required annual recertification fee.

Mortgagees Withdrawn

Salida Building and Loan Assn, Salida, CO; Lomas Mortgage New York Inc, Dallas, TX; United Bank of Griffin FSB, Griffin, GA; First United Savings Bank, FSB, Greencastle, IN; Macomb Savings and Loan Assn, Saint Clair Shores, MI; D M Bullard Mortgage Bankers, Kalamazoo, MI; Community Preservation Corp, New York, NY; Crusader Bank, Rosemont, PA; Chester Valley Bancorp, Downingtown, PA; Heritage Federal Bank FSB, Kingsport, TN; Lomas Financial Corporation, Dallas, TX; Lomas Mortgage USA, Inc, Dallas, TX; Midamerica Bank Hudson, Hudson, WI; First Washington Mortgage Corp, Herndon, VA; American Trust Mortgage Inc, San Jose, CA; Humboldt Mortgage Company, Eureka, CA; Dothan Federal Savings Bank, Dothan, AL; Unlimited Mortgage Services, Worthington, OH; Franklin Bank NA, Southfield, MI; Northside Mortgage Company, Chattanooga, TN; Farmers and Merchants Bank, Milford, NE; First Republic Savings Bank FSB, Roanoke Rapids, NC; CPC Resources Inc, New York, NY; First Fidelity Funding Corp, Fort Lauderdale, FL; Teico Financial Services Inc, Manalapan, NJ; Richmond Mortgage Corporation, Athens, GA; Glendale Federal Bank, Glendale, CA; Access Mortgage Incorporated, Milpitas, CA; Diversified Residential Funding, Altamonte Springs, FL; Delta Home Mortgage Incorporated, Sheridan, AR; First American Lending, Coral Gables, FL.

Title I Lenders Withdrawn

Heritage Pullman Bk Trust Co, Chicago, IL; Devon Bank, Chicago, IL; Laurel Federal Savings and Loan, Laurel, MS; Lehigh Savings Bank SLA, Union, NJ; Lending Source, Folsom, CA; First Continental Mortgage Corp, Jonesboro, AR; Orange Coast Mortgage Inc, Irvine, CA; S and S Financial Inc, Woodland Hills, CA; Delta Acceptance Corp, Gonzales, LA.

Dated: May 1, 1997.

Nicolas P. Retinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–11810 Filed 5–6–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR4221–D–01]

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority.

SUMMARY: In this notice, the Secretary of the Department of Housing and Urban Development delegates all power and authority to administer the Portfolio Reengineering Demonstration Programs to the Assistant Secretary for Housing-Federal Housing Commissioner.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: George C. Dipman, Demonstration Program Coordinator, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6106, Washington, DC 20410–4000; Telephone (202) 708–3321. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY).

SUPPLEMENTARY INFORMATION: Over 800,000 housing units in approximately 8,500 projects are currently financed with FHA-insured loans and supported by project-based Section 8 housing assistance payment ("HAP") contracts. In many cases, these HAP contracts currently provide for rents which substantially exceed the rents received by comparable unassisted units in the local market. Starting in Fiscal Year ("FY") 1996, those Section 8 contracts began to expire, and Congress and the Administration provided one-year extensions of expiring contracts at a cost of over $200 million. While annual HAP contract extensions for these projects maintain an important housing resource, they come at great expense. Every year more contracts expire, compounding the cost of annual extensions. In ten years, the annual cost of renewing Section 8 contracts is projected to rise to approximately $7 billion, about one-third of HUD's current budget. If, however, the Section 8 assistance is reduced or eliminated, there is an increased likelihood that these projects will be unable to continue to meet their financial obligations including operating expenses, debt service payments, and current and future capital needs.

In seeking a solution to this serious problem, Congress enacted Section 210 of Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) ("HUD's FY 1996 Appropriations Act"), authorizing HUD to conduct a demonstration program designed to explore various approaches for restructuring the financing of projects that have FHA-insured mortgages and that receive Section 8 rental assistance, and taking other related action in order to reduce the risk to the FHA insurance fund and lower subsidy costs while preserving housing affordability and availability.

Sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104–204, 110 Stat. 2874, approved September 26, 1996) ("HUD's FY 1997 Appropriations Act") respectively, grant Section 8 Contract Renewal Authority, repeal the Portfolio Reengineering Demonstration Program authorized by Section 210 of HUD's FY 1996 Appropriations Act, and authorize the conduct of a new Portfolio Reengineering Demonstration Program, modelled in large part after the FY 1996 Portfolio Reengineering Demonstration Program.

Although Section 212 of HUD's FY 1997 Appropriations Act repealed the Portfolio Reengineering Demonstration Program authorized under Section 210 of HUD's 1996 Appropriations Act, funds made available under Section 210 remain available through FY 1997, and the FY 1997 Portfolio Reengineering Demonstration Program does not nullify any agreements or proposals that have been submitted under the FY 1996 Portfolio Reengineering Demonstration Program. Proposals submitted under the FY 1996 Portfolio Reengineering Demonstration Program which were received by the Department prior to September 25, 1996 will continue to be

processed by HUD, pursuant to the FY 1996 legislation.

The Portfolio Reengineering Demonstration Program, authorized by the FY 1996 Appropriations Act, as implemented by a notice published at 61 FR 34664, July 2, 1996, and the Portfolio Reengineering Demonstration Program, authorized by the FY 1997 Appropriations Act, as implemented by a notice published at 62 FR 3566, January 23, 1997, grant the Secretary of the Department of Housing and Urban Development all power and authority to administer these demonstration programs.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority to administer the Portfolio Reengineering Demonstration Programs, as granted by Section 210 of the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321), and Sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104–204, 110 Stat. 2874, approved September 26, 1996).

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 28, 1997.

Andrew Cuomo,

Secretary of the Department of Housing and Urban Development.

[FR Doc. 97–11812 Filed 5–6–97; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4221–D–02]

Redelegation of Authority

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

ACTION: Redelegation of authority.

SUMMARY: In a notice published elsewhere in today's **Federal Register**, the Secretary of the Department of Housing and Urban Development delegated all authority with respect to the Portfolio Reengineering Demonstration Programs to the Assistant Secretary for Housing-Federal Housing Commissioner. In this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates the authority to execute restructuring commitment letters and closing documents with respect to the Portfolio Reengineering Demonstration Programs to the Deputy Assistant Secretary for Multifamily Housing Programs, who further redelegates this authority, as specified herein, to various field office Directors, Office of Housing; Directors, Housing Division; and Directors, Office of Multifamily Housing.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: George C. Dipman, Demonstration Program Coordinator, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6106, Washington, DC 20410–4000; Telephone (202) 708–3321. (This is not a toll-free number). Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY).

SUPPLEMENTARY INFORMATION: Over 800,000 housing units in approximately 8,500 projects are currently financed with FHA-insured loans and supported by project-based Section 8 housing assistance payment ("HAP") contracts. In many cases, these HAP contracts currently provide for rents which substantially exceed the rents received by comparable unassisted units in the local market. Starting in Fiscal Year ("FY") 1996, those Section 8 contracts began to expire, and Congress and the Administration provided one-year extensions of expiring contracts at a cost of over $200 million. While annual HAP contract extensions for these projects maintain an important housing resource, they come at great expense. Every year more contracts expire, compounding the cost of annual extensions. In ten years, the annual cost of renewing Section 8 contracts is projected to rise to approximately $7 billion, about one-third of HUD's current budget. If, however, the Section 8 assistance is reduced or eliminated, there is an increased likelihood that these projects will be unable to continue to meet their financial obligations including operating expenses, debt service payments, and current and future capital needs.

In seeking a solution to this serious problem, Congress enacted Section 210 of Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) ("HUD's FY 1996 Appropriations Act"), authorizing HUD to conduct a demonstration program designed to explore various approaches for restructuring the financing of projects that have FHA-insured mortgages and that receive Section 8 rental assistance, and taking other related action in order to reduce the risk to the FHA insurance fund and lower subsidy costs while preserving housing affordability and availability.

Sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104–204, 110 Stat. 2874, approved September 26, 1996) ("HUD's FY 1997 Appropriations Act") respectively, grant Section 8 Contract Renewal Authority, repeal the Portfolio Reengineering Demonstration Program authorized by Section 210 of HUD's FY 1996 Appropriations Act, and authorize the conduct of a new Portfolio Reengineering Demonstration Program, modelled in large part after the FY 1996 Portfolio Reengineering Demonstration Program.

Although Section 212 of HUD's FY 1997 Appropriations Act repealed the Portfolio Reengineering Demonstration Program authorized under Section 210 of HUD's 1996 Appropriations Act, funds made available under Section 210 remain available through FY 1997, and the FY 1997 Portfolio Reengineering Demonstration Program does not nullify any agreements or proposals that have been submitted under the FY 1996 Portfolio Reengineering Demonstration Program. Proposals submitted under the FY 1996 Portfolio Reengineering Demonstration Program which were received by the Department prior to September 25, 1996 will continue to be processed by HUD, pursuant to the FY 1996 legislation.

The Portfolio Reengineering Demonstration Program, authorized by the FY 1996 Appropriations Act, as implemented by a notice published at 61 FR 34664, July 2, 1996, and the Portfolio Reengineering Demonstration Program, authorized by the FY 1997 Appropriations Act, as implemented by a notice published at 62 FR 3566, January 23, 1997, grant the Secretary of the Department of Housing and Urban Development ("Secretary") all power and authority to administer these demonstration programs, including the authority to execute restructuring commitment letters and closing documents. A restructuring commitment letter is a document sent to the participating project owner

memorializing the final restructuring agreement between HUD and the participating project owner with respect to the specific project, and the closing documents must be executed for the project restructuring to become effective.

Elsewhere in today's **Federal Register**, the Secretary has redelegated to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority with respect to the Portfolio Reengineering Demonstration Program. That delegation authorizes the Assistant Secretary to further redelegate such authority.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing redelegate authority as follows:

Section A. Authority Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs the authority to execute restructuring commitment letters and closing documents related to the Portfolios Reengineering Demonstration Programs, as granted by Section 210 of the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321), and Section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104–204, 110 Stat. 2874, approved September 26, 1996).

Section B. Authority Further Redelegated

The Deputy Assistant Secretary for Multifamily Housing Programs redelegates authority under the Portfolio Reengineering Demonstration Programs authorized by HUD's FY 1996 and FY 1997 Appropriations Acts as follows:

(1) The authority to execute restructuring commitment letters is redelegated to the:

(1) Director, Multifamily Housing Division, in the Pittsburgh Area Office;
(b) Director, Multifamily Housing Division, in the Buffalo Area Office;
(c) Director, Multifamily Housing Division, in the Cleveland Area Office;
(d) Director, Multifamily Housing Division, in the Kansas/Missouri State Office;
(e) Director, Multifamily Housing, and the Director, Multifamily Housing Division, in the Georgia State Office;
(f) Director, Office of Housing, and the Director, Multifamily Housing Division, in the Jacksonville Area Office;
(g) Director, Office of Housing, and the Director, Multifamily Housing Division, in the Colorado State Office;
(h) Director, Multifamily Housing Division, in the Houston Area Office;
(i) Director, Office of Housing, and the Director, Multifamily Housing Division, in the California State Office; and
(j) Director, Office of Housing, and the Director, Multifamily Housing Division, in the Washington State Office.

(2) The authority to execute closing documents is redelegated individually to the Department of Housing and Urban Development field office Directors, Office of Housing; Directors, Housing Division; and the Directors, Multifamily Housing Division.

Section C. Authority Excepted

The authority redelegated under Sections A and B does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 28, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Dated: March 28, 1997.

John H. (Chris) Greer,

Deputy Assistant Secretary for Multifamily Housing Programs.

[FR Doc. 97–11811 Filed 5–6–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–07–1990–00]

Notice of Intent To Amend the Diamond Mountain Resource Management Plan

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to amend the Diamond Mountain Resource Management Plan.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Diamond Mountain Resource Management Plan (DMRMP) to define the appropriate level of management prescriptions for the BLM administered acreage located to the west of the Ouray National Wildlife Refuge in Uintah County, Utah. An environmental assessment would be prepared to address the potential impacts that activities allowed under the current RMP decisions may have on the adjoining wildlife refuge. The EA would be prepared by an interdisciplinary team and would address issues including but not limited to, land use, mineral development, wildlife, cultural resources, and special status plant and animal species. The EA and accompanying plan amendment would provide the basis for redefining the management prescriptions determined necessary to maintain viable use and management of the public lands by the BLM and to avoid creating an impediment to the management objectives of the U.S. Fish and Wildlife Service (USFWS) in managing the wildlife refuge.

DATES: The comment period for the proposed plan amendment will commence with the date of publication of this notice. All comments must be submitted on or before June 6, 1997.

SUPPLEMENTARY INFORMATION: The BLM administers approximately 4,907.05 acres of land located west of the Ouray National Wildlife Refuge, including approximately 815 acres which are submerged under Pelican Lake. The Ouray National Wildlife Refuge encompasses an area of approximately 11,827 acres and is managed by the USFWS for the purposes of producing waterfowl and providing habitat for migratory birds. Management objectives of the refuge have been impaired by high levels of selenium which accrue in the ponds within the refuge. Studies conducted by the USFWS assert that the high selenium levels result from water seepage through shale formations which underlie the surrounding area and that various types of land uses on the BLM administered acreage west of and upgradient to the refuge induce increases in selenium levels. The EA would address those activities currently allowed under the decisions of the DMRMP which could contribute to increased selenium and the plan amendment would serve to redefine which uses may continue to be authorized and which actions may continue to occur on the public land acreage. The decisions being reviewed pertain only to the following described public lands:

T. 7 S., R. 20 E., SLM, Utah
Sec. 19, lots 3, 4, E½SW¼, E½SE¼;
Sec. 20, SW¼NE¼, S½;
Sec. 21, SW¼, W½SE¼, SE¼SE¼;
Sec. 26, E½;
Sec. 28, N½N½;

Sec. 29, N½, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 30, lots 1–4, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 31, lots 1–4, E½NE¼;
Sec. 33, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 35, lots 1–4, NE¼NE¼, SE¼NW¼, S¼.
T. 8 S., R. 20 E., SLM, Utah
Sec. 3, S½NW¼, S½;
Sec. 4, lot 1, SE¼NE¼;
Sec. 5, lots 3–7, SE½NW¼, SE¼;
Sec. 8, lots 1–4, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 9, S½;
Sec. 10, N½;
Sec. 17, lots 1, 2.

Public participation will be actively sought to ensure that the EA addresses all issues, problems, and concerns from those interested in the management of the public lands described above. The development of the EA is a public process and the public is invited and encouraged to assist in the identification of issues. Formal public participation will be requested upon the completion of the EA and the publishing of the notice of availability in both the **Federal Register** and local newspapers.

FOR FURTHER INFORMATION CONTACT: David E. Howell, District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078; telephone (801) 781–4400. Existing planning documents and information are available for review at the above address. Comments on the proposed plan amendment should be sent to the above address.

Dated: April 30, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–11852 Filed 5–6–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 53113–53117; OR–080–07–1430–01: G7–0172]

Realty Action; Proposed Modified Competitive Sale

April 28, 1997.

The Notice of Realty Action published in the November 7, 1996, edition of the **Federal Register** (61 FR 57696) is hereby amended as follows:

The appraised fair market value of the parcels is as follows:

Lot 6, (OR 53113): $500.00
Lot 7, (OR 53114): $500.00
Lot 8, (OR 53115): $1,500.00
Lots 9 and 10, (OR 53116): $12,000.00
Lots 11 and 12, (OR 53117): $19,000.00

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11 am on Wednesday, May 28, 1997. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than 10 percent of the amount bid. The bids will be opened and an apparent high bid declared at the sale. The balance of the purchase price shall be paid within 180 days of the sale date. A nonrefundable $50.00 filing fee will be required from the high bidder for the conveyance of the mineral estate.

All other conditions of the notice remain in effect.

Dana R. Shuford,

Tillamook Area Manager.

[FR Doc. 97–11872 Filed 5–6–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–056–1430–01–24–1A]

Plan Amendment, Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan amendment, notice of availability.

SUMMARY: The Bureau of Land Management completed a Proposed Plan Amendment/EA/FONSI for the Mountain Valley Management Framework Plan (MFP) on April 11, 1997. All public lands and the mineral estate have been analyzed. The environmental assessment (EA) revealed no significant impact from the proposed action. The Mountain Valley MFP would be amended to identify the following public lands suitable for direct sale to Mr. Phillip Burr and Circleville Town: T. 30 S., R. 4 W., Section 23, SE1/4SW1/4SW1/4 and T. 26 S., R. 1 W., Section 11, S1/2NE1/4NE1/4SE1/4, Salt Lake Meridian, Utah, containing a total of 15.0 acres. All minerals in the lands would be reserved to the United States. A Notice of Intent proposing to amend the MFP was published in the **Federal Register** on February 7, 1997.

This plan amendment would allow the Sevier River Resource Area to sell the identified public land, at fair market value, pursuant to Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713), and Title 43 CFR Part 2710. A 30 day protest period for the planning amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Dave Henderson, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701. Existing planning documents and information are available at the above address or telephone (801) 896–1500. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with provisions of 43 CFR 1610.5–2, as follows: Protests must pertain to issues that were identified in the plan or through the public participation process. As a minimum, protests must contain the name, mailing address, telephone number, and interest of the person filing the protest. A statement of the issue or issues being protested must be included. A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed amendment, where practical, should be included. A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record. A concise statement as to why the protester believes the BLM State Director's decision is incorrect. Protests must be received by the Director of the Bureau of Land Management (WO–210), Attn: Brenda Williams, 1849 C Street, NW., Washington, DC 20240, within 30 days after the publication of this notice of availability for the planning amendment.

G. William Lamb,

Utah State Director.

[FR Doc. 97–11853 Filed 5–6–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Oryx Energy Company, Exploration Activity, SEA No. R–3114 ..	High Island, East Addition, South Extension, Block A–377, Lease OCS–G 15821, 114 miles southeast of the nearest coastline on Galveston Island, Texas.	02/18/97
Chevron U.S.A., Pipeline Activity, SEA No. G–16099	Mobile Area, Block 864 to 823, Lease OCS G–16099, 4 to 10 miles south of the nearest coastline in Alabama.	01/31/97
Marathon Pipe Line Company, Pipeline Activity, SEA No. G–17044.	Ship Shoal Area, Blocks 207, 192, 193, 194, 181, 180, 171, 156, 155, 148, 131, 130, 125, 106, 101, 102, 81, 78, 79, 56, and 55; Eugene Island Area, Blocks 103, 102, 81, 82, 79, 78, 61, 56, 55, 40, 41, 32, and 19; Lease OCS–G 10744, 3 to 63 miles south of the nearest coastline in Louisiana.	03/03/97
Phillips Petroleum Company, Structure Removal Operations, SEA No. ES/SR 95–116A.	West Cameron Area, Block 115, Lease OCS–G 2828, 16 miles south of Cameron Parish, Louisiana.	02/26/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 96–05UC.	South Marsh Island Area, Block 78, Lease OCS–G 1210, 74 miles southeast of Freshwater City, Louisiana.	02/20/97
DelMar Petroleum, Inc., Structure Removal Operations, SEA No. ES/SR 96–143A.	Eugene Island Area, Block 343, Lease OCS–G 2320, 67 miles south-southwest of Terrebonne Parish, Louisiana.	04/17/97
Oryx Energy Company, Structure Removal Operations, SEA Nos. ES/SR 96–160 through 96–162.	High Island Area, East Addition, Block 129, Lease OCS–G 1848, 50 miles south of Jefferson County, Texas.	01/24/97
Newfield Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 96–166 and 96–167.	East Cameron Area, Blocks 67 and 48, Leases OCS 0161 and OCS 0768, 20 to 25 miles south of Cameron Parish, Louisiana.	01/16/97
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 97–001A.	East Cameron Area, Block 219, Lease OCS–G 7652, 68 miles south of Cameron Parish, Louisiana.	02/18/97
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–005.	West Cameron Area, Block 67, Lease OCS–G 3256, 6 miles south of Cameron Parish, Louisiana.	02/13/97
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–007.	Eugene Island Area, Block 208, Lease OCS 0576, 50 miles south of St. Mary Parish, Louisiana.	01/22/97
Energy Development Corporation, Structure Removal Operations, SEA No. ES/SR 97–008.	North Padre Island Area, Block 967, Lease OCS–G 3218, 19 miles east of Padre Island National Seashore.	02/28/97
Texaco Inc., Structure Removal Operations, SEA Nos. ES/SR 97–019 through 97–022.	South Marsh Island Area, North Addition, Blocks 217 and 222; Vermilion Area, Block 31; Leases OCS 0310 and OCS–G 2868, 10 to 15 miles south of Vermilion Parish, Louisiana.	01/22/97
UNOCAL Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 97–023A.	Matagorda Island Area, Block 701, Lease OCS–G 4549, 20 miles south of Calhoun County, Texas.	02/14/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97–024 through 97–034.	West Delta Area, Blocks 23 & 24, Leases OCS–G 1331 and OCS 0691, 4 miles south of Plaquemines Parish, Louisiana.	02/24/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–035.	South Timbalier Area, Block 35, Lease OCS–G 3336, 8 miles south of Terrebonne Parish, Louisiana.	02/06/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97–045 through 97–050.	South Timbalier Area, Block 21, Lease OCS 0263, 3 miles southwest of Plaquemines Parish, Louisiana.	02/20/97
Santa Fe Energy Resources, Inc., Structure Removal Operations. SEA Nos. ES/SR/97–051 through 97–054.	High Island Area, Blocks A–172 and A–173, Leases OCS–G 6202 and 6203, 46 miles south of Jefferson County, Texas.	02/06/97
CNG Producing Company, Structure Removal Operations, SEA No. ES/SR 97–061.	South Timbalier Area, Block 76, Lease OCS–G 4460, 18 miles south of Terrebonne Parish, Louisiana.	03/20/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–062.	South Timbalier Area, Block 189, Lease OCS–G 1572, 34 miles south of Terrebonne Parish, Louisiana.	03/21/97
Union Pacific Resources, Structure Removal Operations, SEA No. ES/SR 97–063.	Galveston Area, Block A–125, Lease OCS–G 9055, 70 miles south of Galveston, Texas.	04/11/97
Amoco Exploration and Production, Structure Removal Operations, SEA No. ES/SR 97–064.	West Delta Area, Block 140, Lease OCS–G 5682, 27 miles southeast of Plaquemines Parish, Louisiana.	03/20/97
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 97–068.	Eugene Island Area, Block 278, Lease OCS–G 3996, 50 miles south of Terrebonne Parish, Louisiana.	03/20/97
Apache Corporations, Structure Removal Operations, SEA No. ES/SR 97–072.	Ship Shoal Area, Block 158, Lease OCS 0816, 26 miles south of Terrebonne Parish, Louisiana.	03/27/97

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS as encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and

present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the qualify of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: April 28, 1997.

Chris C. Oynes,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 97–11874 Filed 5–6–97; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–761–762 (Preliminary)]

Static Random Access Memory Semiconductors From the Republic of Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (the Act),[2] that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Republic of Korea (Korea) [3] and Taiwan [4] of static random access memory semiconductors (SRAMs),[5] that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, as amended,[6] the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On February 25, 1997, a petition was filed with the Commission and the Department of Commerce by Micron Technology, Inc., Boise, ID, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of SRAMs from the Republic of Korea and Taiwan. Accordingly, effective February 25, 1997, the Commission instituted antidumping Investigations Nos. 731–TA–761–762 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 5, 1997.[7] The conference was held in Washington, DC, on March 18, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 11, 1997. The views of the Commission are contained in USITC Publication 3036 (April 1997), entitled "Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan: Investigations Nos. 731–TA–761–762 (Preliminary)."

By order of the Commission.

Issued: April 28, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–11861 Filed 5–6–97; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] 19 U.S.C. § 1673b(a).

[3] Chairman Miller not participating.

[4] Chairman Miller and Commissioner Crawford not participating.

[5] The imported products subject to these investigations are synchronous, asynchronous, and specialty SRAMs, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or dice, uncut dice, and cut dice. Processed wafers produced in Korea and Taiwan, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea or Taiwan are not included in the scope. The scope of the investigations also includes modules containing SRAMs. Such modules include single in-line memory modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The SRAMs subject to these investigations are provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States.

[6] 61 FR 37818 (July 22, 1996).

[7] 62 FR 10073.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–750 (Final)]

Vector Supercomputers From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–750 (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 threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of vector supercomputers, provided for in heading 8471 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the 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), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: April 1, 1997.

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software shipped to fulfill the requirements of a contract for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards."

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, US 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. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of vector supercomputers from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 USC § 1673b). The investigation was requested in a petition filed on July 29, 1996, by Cray Research, Inc., Eagan, MN.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. 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 the final phase of this investigation will be placed in the nonpublic record on August 12, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 am on August 27, 1997, at the US International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August August 19, 1997. 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 August 22, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is August 21, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 4, 1997; witness testimony must be filed no later than three 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 September 4, 1997. On September 19, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 23, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 28, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–11862 Filed 5–6–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 1, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720

between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management, Departmental Management.

Title: Generic Customer Satisfaction Survey.

OMB Number: 1225–0059 (extension).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 75,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 12,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This information collection request is to obtain OMB approval to conduct a variety of customer satisfaction surveys in accordance with Executive Order 12862, Setting Customer Service Standards.

Agency: Employment and Training Administration.

Title: Section 401 JTPA Administrator Survey.

OMB Number: 1205–0000 (new collection).

Frequency: One Time.

Affected Public: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 175.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 88 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Descriptions: The purpose of this data collection is to better determine 401 program grantees goals and organizational structure, responsiveness of services provided by the Department of Labor, and the success of services provided by Job Training Partnership Act (JTPA) 401 grantees.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–11888 Filed 5–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Services to Migrant and Seasonal Farmworkers Report and Employment Service Compiaint/Referrai Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed change on the Employment Service Complaint Referral Record, ETA 8429.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 7, 1997. Written comments should evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information.

ADDRESSES: Pearl Wah, U.S. Employment Service, Employment and Training Administration, Department of Labor Room N–4470, 200 Constitution Avenue., NW., Washington, DC 20210, 202–219–5185 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

As part of the settlement in the case of NAACP v. Secretary of Labor (Civil Action No. 2010–72, U.S.D.C.), the U.S. Department of Labor (DOL) negotiated with the plaintiffs a series of regulations published June 10, 1980. Employment and Training Administration (ETA) regulations at 20 CFR 651, 653, and 658 under the Wagner-Peyser Act as amended by the Job Training Partnership Act, set forth the role and responsibilities of the United States Employment Services (USES) and the State Employment Service Agencies (SESA) regarding compliance of said regulations.

In compliance with 20 CFR 653.109, DOL established recordkeeping requirements to allow for the efficient and effective monitoring of SESAs regulatory compliance.

The ETA Form 8429, Employment Service Compliant Referral Record, is used to collect and document all individual complaints filed under the ES complaint system.

The ETA Form 5148, Services to Migrant and Seasonal Farmworkers Report, is used to collect data which are primarily used to monitor and to measure the extent and effectiveness of ES services to MSFWS as a high priority target group for ES services.

II. Current Actions

This is a request for OMB approval Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) of a revision to Item 6 of ETA Form 8429. To comply with the nondiscrimination regulations (29 CFR Part 34) covering State Employment Security Agencies, Item 6 will be changed to read as follows: Persons wishing to file complaints of discrimination may file either with the SESA, or with the Directorate of Civil Rights (DCR), U.S. Department of Labor, 200 Constitution Avenue NW., room N–4123, Washington, DC 21210. There is no change in burden.

Type of Review: Revision.

Agency: Employment and Training Administration, Labor.

Titles: Services to Migrant and Seasonal Farmworkers Report and Employment Service Complaint Referral Record.

OMB Number: 1205–0039.

Frequency: Quarterly and on occasion, respectively.

Affected Public: State governments.

Number of Respondents: 208.

Estimated Cost Per Respondent: No cost to respondent.

Estimated Burden Hours: 5530.

Complaint Log Maintenance

1. Recordkeeping
   Number of recordkeepers 168
   Annual hours per recordkeeper 6.3
   Recordkeepers Hours 1,059
2. Processing ETA Form 8429
   Annual number of forms 2,520
   Minutes per form 8
   Processing Hours 327

Outreach Log

1. Recordkeeping
   Number of Recordkeepers 150
   Annual hours per recordkeeper 26
   Recordkeepers Hours 3,900
2. Data Collection/Reporting ETA 5148
   Annual number of reports 208
   Minutes per report 70
   Recordkeeping Hours 244

Comments submitted in response to this notice will be summarized and/or included in the request for Office Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 30, 1997.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 97–11889 Filed 5–6–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Changes in Subject of Meeting; Sunshine Act Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced closed meeting (**Federal Register**, Vol. 62, No. 81, page 22973, Monday, April 28, 1997) scheduled for Friday, May 2, 1997.

1. Approval of Minutes of Previous Closed Meeting.

The Board voted unanimously that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The National Credit Union Administration Board also determined that its business required the addition of the following item to the closed agenda.

3. Request for Waiver of Reserving Requirements from Sections 116 (a) and (b) of the Federal Credit Union Act and Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

The Board voted unanimously that agency business required that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.

2. Personnel Action(s). Closed pursuant to exemption (2) and (6).

For Further Information Contact: Becky Baker, Secretary of the Board, Telephone (703) 518–6312.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–12050 Filed 5–5–97; 2:23 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–297]

Notice of Renewal of Facility License No. R–120; North Carolina State University

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility License No. R–120 for the North Carolina State University (the licensee), which renews the license for operation of the PULSTAR Research Reactor located on the licensee's campus in Raleigh, North Carolina.

The facility is a non-power reactor that has been operating at a power level not in excess of 1000 kilowatts (thermal). Renewed Facility License No. R–120 will expire 20 years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on December 28, 1988, at 53 FR 52535. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. On the basis of the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

The Commission has prepared a "Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at North Carolina State University" (NUREG–1572) for the renewal of Facility License No. R–120 and has, on the basis of that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also prepared an Environmental Assessment, which was published in the **Federal Register** on April 29, 1997 (62 FR 23280) for the renewal of Facility License No. R–120 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) The application for amendment dated August 19, 1988, as supplemented on January 2, April 17, and December 18, 1989; April 17 and July 18, 1990; January 25, 1991; November 30, 1992; September 15, 1995; and October 4, November 25, and December 30, 1996; (2) Amendment No. 11 to Facility License No. R–120; (3) the related Safety Evaluation Report (NUREG–1572); and (4) the

Environmental Assessment dated April 18, 1997. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037.

Copies of NUREG–1572 may be purchased by calling (202) 275–2060 or (202) 275–2171, or write the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982.

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11858 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 27–48]

Notice of Amendment Consideration; US Ecology

AGENCY: Nuclear Regulatory Commission.

ACTION: Consideration of an amendment to a license for disposal of low-level radioactive waste containing special nuclear material by US Ecology, incorporated and transfer of license to the State of Washington, and an opportunity for a hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering a request to amend License No. 16–19204–01. This license is issued to US Ecology, Incorporated (US Ecology) for the disposal of wastes containing special nuclear material (SNM) in the low-level radioactive waste (LLW) disposal facility, located near Richland, Washington. NRC licenses this facility under 10 CFR part 70. The amendment would reduce the SNM possession limit of the license, and NRC would subsequently transfer the license to the State of Washington. Washington Department of Health (WADOH) already regulates disposal of source and byproduct material at the Richland facility.

FOR FURTHER INFORMATION CONTACT: Timothy E. Harris, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613. Fax.: (301) 415–5398.

Background

The LLW disposal facility located near Richland, Washington, is licensed by NRC for possession, storage, and disposal of SNM. The State of Washington licenses disposal of source and byproduct material at the facility. In correspondence dated March 31, 1997, US Ecology requested amendment of its NRC SNM license and subsequent transfer of the license to the State. As justification for the request, US Ecology noted a reduction in SNM-bearing waste volumes and the diminished cost-effectiveness of the license. Currently, the NRC license permits possession, storage, and disposal of greater than critical mass quantities of SNM, and acknowledges that the State-regulated source and byproduct disposal activities constitute the major site activities. Possession, storage, and disposal of less than critical mass quantities can be regulated by Agreement States, in accordance with 10 CFR part 150 (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). Specifically, § 150.11 defines less than critical mass limits of SNM which can be regulated by Agreement States.

NRC plans to amend the license to reduce the SNM possession limit to those specified in § 150.11. This amendment will result in a change in process operations. The reduction in possession limit will not significantly change the types or amounts of effluents that may be released offsite, will not increase individual or cumulative occupational radiation exposure, will not be a significant construction impact, and will not significantly increase the potential for or consequences from radiological accidents. Accordingly, the amendment is categorically exempt from an environmental assessment under 10 CFR 51.22(c)(11). Following issuance of this amendment, NRC will transfer the license to WADOH.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, US Ecology, Inc., 120 Franklin Road, Oak Ridge, Tennessee 37830, Attention: Ms. Sandra Beeler, and;

2. NRC staff, by delivery to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudication Branch; or hand-deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:45 am and 4:15 pm, Federal workdays.

For further details with respect to this action, the application for amendment request is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–11860 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Company, Wisconsin Power and Light Company, and Madison Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–

43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) requirements related to the auxiliary feedwater system by reducing the minimum required auxiliary feedwater flow and clarifying the requirements for the auxiliary feedwater cross-connect valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The auxiliary feedwater system is not an accident initiator; therefore, changes in the system, especially a process flow parameter, will not increase the probability of an accident previously evaluated. As detailed in the safety evaluation summary, the limiting plant transients and accidents have been reanalyzed and evaluated demonstrating that the relevant acceptance criteria continue to be satisfied with no significant changes. Therefore, there is not a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The primary function of the auxiliary feedwater system is to mitigate analyzed accidents. Failures of the system do not result in accidents. The proposed change is to a system process parameter. Since system design redundancy is not affected by this change, single failure requirements continue to be satisfied. This change can, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

As detailed in the safety evaluation summary, the limiting plant transients and accidents have been reanalyzed and evaluated. This has shown that the acceptance criteria continue to be satisfied with no significant changes. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in preventing startup 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. Should the Commission take this action, it will publish, in the **Federal Register**, a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. on 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 6, 1997, 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, and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin. 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri, 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: 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 Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, Wisconsin 53701–1497, 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 presiding 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).

For further details with respect to this action, see the application for amendment dated April 28, 1997, which is 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 University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin.

Dated at Rockville, Maryland, this 1st day of May 1997.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11857 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a 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 this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of

the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: February 28, 1997.

Brief Description of Amendment

The amendment proposes to add a definition for completion times and to define the maximum interval between repetitive action completion times in the Technical Safety Requirements and to make the same changes to the Safety Analysis Report.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions is an administrative action. As such, these changes have no impact on plant effluents and will not result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment will not increase radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions will provide more formality for the conduct of plant operations. This inclusion will ensure consistent interpretation of the requirements. The proposed changes do not affect the potential for, or radiological or chemical consequences from, previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions will ensure consistent interpretation of the requirements. The changes will not create new operating conditions or a new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

A definition for completion time and the definition for a maximum time interval for repetitive actions were not formally defined in the past and were subject to interpretation. The addition of these definitions for completion time and the maximum time interval for repetitive actions provides more formality for the conduct of plant operations. The proposed changes cause no reductions in the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions provides more formality for the conduct of plant operations. The effectiveness of the safety, safeguards, and security programs is not decreased.

EFFECTIVE DATE: Thirty days after issuance.

Certificate of Compliance No. GDP–2

Amendment will incorporate a new Technical Safety Requirement, a revised Technical Safety Requirement and Safety Analysis Report changes.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–11859 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power & Light Company, Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License Nos. NPF–14 and NPF–22, issued to Pennsylvania Power & Light Company (the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania, from the requirements of 10 CFR 50.71(e)(4).

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow exemption from the requirements of 10 CFR 50.71(e)(4) regarding the submission of revisions to the Final Safety Analysis Report (FSAR) and safety evaluation summary reports for facility changes made under 10 CFR 50.59 for Susquehanna Steam Electric Station (SSES). Specifically, the exemption requests that Pennsylvania Power & Light Company be allowed to schedule updates to both units of the SSES FSAR and submit safety evaluation summary reports based upon the refueling cycle frequency for Unit 2. The proposed action is in accordance with the licensee's application for exemption dated September 6, 1996.

The Need for the Proposed Action

It is required in 10 CFR 50.71 (e)(4) that licensees are to submit the updates

to their FSAR within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since SSES Units 1 and 2 share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. The proposed action would maintain the SSES FSAR current within 24 months of the last revision and would not exceed the 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, dated June 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on March 24, 1997, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 6, 1996, which is 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 Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 2nd day of May 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11832 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, Et Al., Perry Nuclear Power Plant, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order under 10 CFR 50.80, of the indirect transfer of Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, *et al.*, the licensees, for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of the license with respect to a proposed merger between Centerior Energy Corporation (the parent corporation for The Cleveland Electric Illuminating Company, Toledo Edison Company, and Centerior Service Company; licensees for Perry Nuclear Power Plant, Unit No. 1) and Ohio Edison Company (Perry licensee). Ohio Edison Company is also the parent company for OES Nuclear, Inc., and Pennsylvania Power Company, which are also licensees for Perry. The merger would result in the formation of a new single holding company, First Energy Corp.

The proposed action is in accordance with The Cleveland Electric Illuminating Company's request for approval dated December 13, 1996. Supplemental information was submitted by letter dated February 14, 1997.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the indirect transfer of the license discussed above. According to the licensee, the underlying transaction is needed to create a stronger, more competitive enterprise that is expected to save over $1 billion over the first 10 years of FirstEnergy operation.

Environmental Impacts of the Proposed Action

The Commission has reviewed the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Perry Nuclear Power Plant, Unit Nos. 1 and 2, documented in NUREG–0884.

Agencies and Persons Consulted

In accordance with its stated policy, on April 10, 1997, the staff consulted with the Ohio State official, C. O'Clare of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see The Cleveland Electric Illuminating Company submittal dated December 13, 1996, supplemented by letter dated February 14, 1997, which 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 Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11855 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–72 issued to Florida Power Corporation, (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3) located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated June 22, as supplemented November 22, 1995 and January 31, 1996 for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system to the site access control such that photograph identification badges can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *" Currently, unescorted access into protected areas of CR3 is controlled through the use of a photograph on a badge and a separate keycard (hereafter, these are referred to as "badge"). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contract personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take badges offsite. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the proposed hand geometry system would provide enhanced site access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure a continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for the facility will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected areas.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the

Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action involves features located within the restricted area as defined in 10 CFR Part 20. The proposed change does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of CR3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on April 28, 1997 the staff consulted with the Florida State Official, Mr. Mike Stephens of the Florida Department of Health and Rehabilitative Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 22, 1995 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 1st day of May 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11854 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation, et al. Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the technical specifications (TSs) to reflect implementation of the revised 10 CFR part 20 which was published in the **Federal Register** on May 21, 1991 (56 FR 23391), and implemented at Oyster Creek on January 1, 1994.

The proposed action is in accordance with the licensee's application for amendment dated November 12, 1996, as supplemented November 27, 1996.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, Appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that implementation of the proposed action, in regards to the actual release rates as referenced in the TSs as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, on April 15, 1997, the staff consulted with the New Jersey State official, Richard Pinney of the State of New Jersey, Department of Environmental Protection regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 12, 1996, as supplemented by letter dated November 27, 1996, which 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 Ocean County Library, Reference Department, 101 Washington, Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 1st day of May 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11856 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of May 5, 12, 19, and 26, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 5

Tuesday, May 6

2:00 p.m. Briefing on PRA Implementation Plan (Public Meeting) (Contact: Gary Holahan, 301–415–2884)

Wednesday, May 7

2:00 p.m. Briefing on IPE Insight Report (Public Meeting)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Thursday, May 8

9:00 a.m. Meeting with Advisory Committee on Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Larry Camper, 301–415–7231)

Week of May 12—Tentative

Tuesday, May 13

2:00 p.m. Briefing by National and Wyoming Mining Associations (Public Meeting)

Wednesday, May 14

2:00 p.m. Briefing on Status of Activities with CNWRA and HLW Program (Public Meeting)

Thursday, May 15

9:30 a.m. Briefing on Status of HLW Program (Public Meeting)

2:00 p.m. Briefing on Performance Assessment Progress in HLW, LLW, and SDMP (Public Meeting)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Week of May 19—Tentative

Tuesday, May 20

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

2:00 p.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Wednesday, May 21

10:00 a.m. Briefing on Program to Improve Regulatory Effectiveness (Public Meeting)

Week of May 26—Tentative

There are no meetings scheduled for the week of May 26.

Note: The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 2, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 97–11969 Filed 5–5–97; 11:04 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 12, 1997, through April 25, 1997. The last biweekly notice was published on April 23, 1997 (62 FR 19825).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 6, 1997, 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 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: March 10, 1997

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by reducing the reactor coolant system (RCS) specific activity limits in accordance with Generic Letter 95-05. The definition of DOSE EQUIVALENT I-131 would be replaced with the Improved Standard TS definition wording in the first sentence and an

equation added based on dose conversion factors derived from International Commission on Radiation Protection (ICRP) ICRP-30. TS 3.4.8, Specific Activity, would be revised by reducing the DOSE EQUIVALENT I-131 limit from 1.0 [micro]Ci[curies]/gram to 0.35 [micro]Ci[curies]/gram. Item 4.a in TS Table 4.4-12, Primary Coolant Specific Activity Sample and Analysis Program, TS Figure 3.4-1, and the Bases for TS 3/4.4.8 would be modified to reflect the reduced DOSE EQUIVALENT I-131 limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change reduces the reactor coolant system (RCS) specific activity limits of Specification 3.4.8 from 1.0 [micro]Ci/gram to 0.35 [micro]Ci/gram and lowers the graph in Figure 3.4-1 by 39 [micro]/Ci gram following the guidance provided in Generic Letter (GL) 95-05. This reduces the RCS activity allowed to leak to the secondary side when the plant is operating so that additional margin is available to support a higher allowable accident-induced leakage value as justified by analysis.

The proposed changes to Specification 3.4.8 and the definition of DOSE EQUIVALENT I-131 ensure these requirements are consistent the latest analyses.

These changes implement the more restrictive RCS activity limits in accordance with applicable analyses and GL 95-05 to ensure the regulations are satisfied. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the configuration of the plant or affect the operation with the reduced specific activity limit. By reducing the specific activity limit, the limit would be reached sooner to initiate evaluation of the out of limit condition. The proposed changes will not result in any additional challenges to the main steam system or the reactor coolant system pressure boundary. Consequently, no new failure modes are introduced as a result of the proposed changes. As a result, the main steam line break, steam generator tube rupture and loss of coolant accident analyses remain bounding. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change reduces the RCS specific activity limit to 0.35 [micro]Ci/gram along with lowering the Figure 3.4-1 limits by 39 [micro]Ci/gram. Reduction of the RCS specific activity limits allows an increase in the limit for the projected SG [steam generator] leakage following SG tube inspection and repair in accordance with the voltage-based SG tube alternate repair criteria (ARC) incorporated by Amendment No. 198. This follows the guidance provided in GL 95-05 and effectively takes margin available in the specific activity limits and applies it to the projected SG leakage for the ARC. This has been determined to be an acceptable means for accepting higher projected leakage rates while still meeting the applicable limits of 10 CFR [Part] 100 and GDC [General Design Criterion] 19 with respect to offsite and control room doses.

The capability for monitoring the specific activity and complying with the required actions remains unchanged. In addition, there is no resultant change in dose consequences. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: March 14, 1997

Description of amendment request: The proposed amendment would relocate the following administrative control technical specifications (TSs) from the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and BVPS-2) TSs to the quality assurance program description, which is presented in Section 17.2 of the BVPS-2 Updated Final Safety Analysis Report (UFSAR). Section 17.2 of the BVPS-2 UFSAR contains the quality assurance program description for both BVPS-1 and BVPS-2. The licensee stated that the proposed changes are based on NRC Administrative Letter 95-06, "Relocation of Technical Specification Administrative Controls Related to Quality Assurance."

BVPS-2 TS 6.2.3 (Independent Safety Evaluation Group)

BVPS-1 and BVPS-2 TS 6.5.1 (Onsite Safety Committee)

BVPS-1 and BVPS-2 TS 6.5.2 (Offsite Review Committee)

BVPS-1 and BVPS-2 TS 6.8.2 (Procedures, Review and Approval)

BVPS-1 and BVPS-2 TS 6.8.3 (Temporary Procedure Changes, Review and Approval)

BVPS-1 and BVPS-2 TS 6.10.1 (Records Retention, At least 5 years)

BVPS-1 and BVPS-2 TS 6.10.2 (Records Retention, Duration of Operating License)

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change would relocate technical specification administrative controls to the quality assurance program description. Adequate controls are provided by the established quality assurance program change process in 10 CFR 50.54(a).

The provisions of Technical Specification 6.2.3.2 which states that: "The ISEG [Independent Safety Evaluation Group] shall be composed of at least five, dedicated, full-time engineers located on site," would be omitted from the provisions relocated to the quality assurance program description. Since no system, component or operational procedure changes are involved, and the ISEG function will continue to be implemented, the change can have no effect on safe operation of the plant.

The likelihood that an accident will occur is not increased by this proposed technical specification change which involves administrative controls. No systems, equipment, or components are affected by the proposed change. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR) are not increased by this change.

Relocation of technical specification provisions and related changes do not affect possible initiating events for accidents previously evaluated or any system functional requirement. The proposed changes have no impact on accident initiators or plant equipment, and do not affect the probabilities or consequences of an accident.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed relocation of technical specification provisions to the quality assurance program description and related changes do not involve changes to the physical plant or operations. Since the proposed changes to administrative controls do not affect equipment or its operation, they cannot contribute to accident initiation and

cannot produce a new accident scenario or a new type of equipment malfunction.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature and do not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change. The proposed changes do not affect the UFSAR design bases, accident assumptions, or technical specification bases. In addition, the proposed changes do not affect release limits, monitoring equipment or practices.

Therefore, the proposed changes would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 11, 1997

Description of amendment request: The proposed amendment modifies Technical Specification (TS) 3.3.3.7.3 and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system at Waterford Steam Electric Station, Unit 3. The proposed change also includes changes in TS Basis 3/4.3.3.7.3 to support the changes.

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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The broad range gas detection system has no effect on the accidents analyzed in chapter 15 of the Final Safety Analysis Report. It's only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications. Analysis has shown that the impact on operator incapacitation and subsequent core damage risk of this background check is negligible.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change in itself does not change the design or configuration of the plant. The new system for broad range toxic gas monitoring performs the same function as the old system, but it accomplishes this with a more sophisticated system that increases reliability.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The broad range gas detection system has no effect on a margin of safety as defined by Section 2 of the Technical Specifications. It's only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 10, 1997

Description of amendment request: The proposed changes would modify the Technical Specifications (TSs) for the Enclosure Building. The Enclosure Building is a limited-leakage, steel-framed structure that completely surrounds the containment. It is designed and constructed to ensure that any leakage of radioactive materials to the environment would not exceed an acceptable upper limit in the event of a design basis loss-of-coolant accident or movement of loads over the spent fuel pool. A slight negative pressure is maintained by the Enclosure Building Filtration System and the system exhausts the filtered air through charcoal and high-efficiency particulate air (HEPA) filters.

Specifically, the proposed changes would relocate the surveillance requirement for attaining a negative pressure in the Enclosure Building from TS 3.6.5.1 "Enclosure Building Filtration System," to TS 3.6.5.2, "Enclosure Building Integrity." TS 3.6.5.2 would also be changed to address operability, which includes integrity requirements, and the Definition 1.25, "Enclosure Building Integrity," would be deleted. TS 4.6.5.2, "Surveillance Requirements," would be modified to require each access opening in the Enclosure Building to be closed instead of the current requirement to close each door (some access openings have two doors in series) in each access opening. This TS would also be renumbered as 4.6.5.2.1.

In addition, editorial changes are proposed for consistency and the index pages would be updated to reflect the proposed changes. The TS Bases would also be updated to reflect the proposed changes including the need to maintain the integrity of the Enclosure Building and to support previously approved laboratory testing requirements for charcoal filter sample testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 3.6.5.1 and 3.6.5.2, relocation of Surveillance Requirement 4.6.5.1.d.3 to Specification 3.6.5.2, changes to Bases Sections 3.6.5.1 and 3.6.5.2, and deletion of Definition 1.25 will resolve the conflict that currently exists between Specifications 3.6.5.1 and 3.6.5.2. Specifically, the requirement to establish and maintain a negative pressure in the Enclosure Building boundary included in Specification 3.6.5.1 belongs in Specification 3.6.5.2. In the event Enclosure Building operability is not maintained in Modes 1-4, the Action Statement for LCO [limiting condition for operation] 3.6.5.2 requires that Enclosure Building operability must be restored within 24 hours. Twenty-four hours is a reasonable completion time considering the limited leakage design of containment and the low

probability of a DBA [design-basis accident] occurring during this time period. Therefore, it is considered that there exists no loss of safety function. The

proposed changes do no modify the LCO or surveillance acceptance criterion, nor do they change the frequency of the surveillances. The proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions. Therefore, the structures, systems, or components will perform their intended function when called upon. (The redundancy of the double doors has not been credited in the radiological dose calculations for any Design Basis Accident.) Additionally, the proposed changes are consistent with the new, improved Standard Technical Specifications for Combustion Engineering plants (NUREG-1432).

The editorial changes to Technical Specifications 3.6.5.1, 3.6.5.2, and 3.9.15 do not change any technical aspect of these specifications. Therefore the proposed changes do not affect the probability of any previously evaluated accident.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not make any physical or operational changes to existing plant structures, systems, or components. The proposed changes do not introduce any new failure modes. The proposed changes simply resolve a conflict which currently exits between Specifications 3.6.5.1 and 3.6.5.2. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not have any adverse impact on the accident analyses. Also, the proposed changes resolve a conflict which currently exists between Specifications 3.6.5.1 and 3.6.5.2. The structures, systems, or components covered under Specifications 3.6.5.1 and 3.6.5.2 will perform their intended safety function when called upon.

Based on the above, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 31, 1997

Description of amendment request: The proposed change revises the Peach Bottom Atomic Power Station, Units 2 and 3 technical specifications to extend the surveillance interval for calibration of Average Power Range Monitor (APRM) flow bias instrumentation from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the accidents previously evaluated take credit only for the clamped 120% high neutron flux scram setpoint. Credit is not taken for the flow biased APRM scram setpoint. Failure or inaccuracy of the flow biased feature of the APRM scram setpoint will in no way affect the clamped high flux scram setpoint. The 120% high flux scram setpoint is derived internal to the APRM circuitry and calibrated separately as part of the APRM trip circuitry. The APRM clamped high flux scram setpoint is not being impacted by the proposed changes and will be automatically enforced regardless of the status or accuracy of the APRM flow bias circuitry.

Because there is no impact on the clamped 120% high neutron flux scram setpoint which is the only APRM scram setpoint with any analytical safety basis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not allow plant operation in any mode that is not already evaluated. The APRM system provides monitoring and accident mitigation functions to limit peak flux in the core during Modes 1 and 2. No pressure boundary interfaces or process control parameters will be challenged in any way as to create the possibility of a new or different type of accident than any previously evaluated. Also, failure of the sensing line associated with flow transmitters to measure recirculation drive flow has already been accounted for in the initial plant design by including excess flow check valves for sensing line break isolation. Therefore, these changes will not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety because the APRM flow biased high flux scram is not credited in the PBAPS safety analysis. Because the proposed changes do not impact safety analysis assumptions, these proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 22, 1997

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) Section 4.2.b, "Steam Generator Tubes," to allow a laser-welded repair of Westinghouse hybrid expansion joint (HEJ) sleeved steam generator (SG) tubes. The proposed repair process would fuse the tube to the sleeve in the upper joint of the existing HEJ sleeved tubes. The repair weld would be made in either the hardroll (HR) expansion or the upper hydraulic expansion (HE) region of the HEJ. By fusing the tube to the sleeve, parent tube degradation below the weld would be isolated and a new pressure boundary would be formed. The new pressure boundary would satisfy both the structural and leakage integrity requirements of the sleeved tube assembly with no change in the flow or heat transfer characteristics of the sleeved tube. The proposed amendment supersedes in its entirety a previously submitted proposed amendment dated September 6, 1996, which was noticed in the Federal Register on October 15, 1996 (61 FR 53769).

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 KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The laser-weld repair of HEJ sleeved tubes in either the HR or HE location will not affect the tube, sleeve, or weld stress conditions or fatigue usage factors such that the limits of the ASME Boiler and Pressure Vessel Code are exceeded. Accelerated corrosion testing performed on prototypic HR welds, and a corrosion assessment performed for the HE welds concluded that the repair welds will not result in aggravated stress corrosion cracking at the weld-repair location. Any postulated sleeve joint degradation would occur at a relatively slow rate and would be detectable by routine non-destructive examination (NDE) inspection prior to reaching any applicable safety margins. Therefore, use of the laser-weld repair process will not result in an increased probability of an accident previously evaluated.

A post-weld stress relief ultrasonic test inspection is required to verify minimum acceptable weld thickness to ensure that the weld stresses do not exceed ASME Code limits for both stress intensity and fatigue usage. Leakage testing of laser-welded sleeve joints, and in-situ leakage testing of the laser-welded repairs (LWR) at KNPP, demonstrate a leak-tight joint at pressures up to main steam line break. Mechanical testing of 7/8 inch laser-welded tubesheet sleeves installed in roll-expanded tubes has shown that the individual joint structural strength of Alloy 690 laser-welded sleeves under normal, upset, and faulted conditions provides margin to acceptable limits. These acceptable limits bound the most limiting (3 times normal operating pressure differential) recommended by Regulatory Guide (RG) 1.121.

The HEJ sleeve plugging limit currently defined in the TS is reduced from 31% to 24% throughwall due to the use of ASME code minimum material properties values for the sleeve material. Minimum wall thickness requirements (used for developing the depth-based plugging limit for the sleeve) are determined using the guidance of RG 1.121 and the pressure stress equation of Section 3 of the ASME Code.

The hypothetical consequences of failure of the laser-welded repaired HEJ would be bounded by the current SG tube rupture (SGTR) analysis covered in the KNPP Updated Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the SGTR, and, therefore, would result in lower primary fluid mass release to the secondary system. The laser-weld repair process does not change the existing reactor coolant system flow conditions; therefore, existing loss of coolant accident (LOCA) and non-LOCA analysis results will be unaffected. Plant response to design basis accidents for the current tube plugging and flow conditions are not affected by the repair process; no new tube diameter restrictions are introduced. Therefore, the application of the repair weld will not increase the consequences of a previously evaluated accident.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Application of laser-welded repair for the HEJ sleeved tubes will not introduce significant or adverse changes to the plant design basis. The general configuration of the HEJ sleeve is unaffected by the repair process. The repair process also does not represent a potential to affect any other plant component. Stress and fatigue analysis of the repair has shown that the ASME Code and RG 1.121 criteria are not exceeded. Application of the laser-weld repair to the HEJ sleeved tubes maintains overall tube bundle structural and leakage integrity. Extensive testing and evaluation including examination of actual pulled tube samples verified adequate structural and leakage integrity of repair HEJs, which had acceptable NDE.

Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the joint is bounded by the existing tube rupture accident analysis. Therefore, use of the laser-welded repair process will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The laser-weld repair of the HEJ sleeved tubes has been shown to restore integrity of the tube bundle consistent with its original design basis conditions; i.e., tube/sleeve operational and faulted load stresses and cumulative fatigue usage factors are bounded by ASME Code requirements and the tubes are leak tight under all plant conditions. Based on the results of the structural and leakage testing performed on LWR joints pulled from the KNPP SGs and supporting analytical evaluations, application of laser-welded repair will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 24, 1997

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) Section 4.2.b, "Steam Generator Tubes," to allow repair of steam generator (SG) tubes with Combustion Engineering (CE) leak-tight sleeves in accordance with CE generic topical report CEN-629-P, Revision 2, "Repair of Westinghouse Series 44 and 51 Steam Generator Tubes Using Leak-Tight Sleeves." The TS would also be revised to allow re-sleeving of tubes with existing sleeve joints in accordance with KNPP specific topical report CEN-632-P, "Repair of Kewaunee Steam Generator Tubes Using a Re-Sleeving Technique."

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 KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical evaluation and safety evaluation for the CE leak-tight sleeves demonstrates that the sleeve configuration will provide SG tube structural and leakage integrity under normal operating and accident conditions. The sleeve configurations have been designed and analyzed in accordance with the requirements of the ASME Code. Mechanical testing has shown that the sleeve and sleeve joints provide margin above acceptance limits. Ultrasonic testing is used to verify the leak tightness of the weld above the tubesheet. Testing has demonstrated the leak tightness of the hardroll joint as well as the structural integrity of the hardroll joint. Tube rupture cannot occur at the hardroll joint due to the reinforcing effect of the tubesheet. Tests have demonstrated that tube collapse will not occur due to postulated loss of coolant accident loadings.

The existing TS leak-rate requirements and accident analysis assumptions remain unchanged in the event that significant leakage does occur from the sleeve joint or the sleeve assembly ruptures. Any leakage through the sleeve assembly is fully bounded by the existing SG tube rupture analysis included in the KNPP Updated Final Safety Analysis Report. The proposed sleeving and re-sleeve repair processes do not adversely impact any other previously evaluated design basis accidents.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Installation of the sleeves or re-sleeves does not introduce any significant changes to the plant design basis. The use of a sleeve to span the area of degradation of the SG tube restores the structural and leakage integrity of the tubing to meet the original design basis. Stress and fatigue analysis of the sleeve assembly shows that the requirements of the ASME Code are met. Mechanical testing has demonstrated that margin exists above the design criteria. Any hypothetical accident as a result of any degradation in the sleeved tube would be bounded by the existing tube rupture accident analysis.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The use of sleeves to repair degraded SG tubing has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of the ASME Code and draft Regulatory Guide 1.121, and to maintain the primary to secondary pressure boundary under normal and postulated accident conditions. The safety factors used in the verification of the strength of the sleeve assembly are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in SG design. The operational and faulted condition stresses and cumulative usage factors are bounded by the ASME Code requirements. The sleeve assembly has been verified by testing to prevent both tube pullout and significant leakage during normal and postulated accident conditions. A test program was conducted to ensure the lower hardrolled joint design was leak tight and capable of withstanding the design loads. The primary coolant pressure boundary of the sleeve assembly will be periodically inspected by non-destructive examination to identify sleeve degradation due to operation.

Installation of the sleeves and re-sleeves will decrease the number of tubes that must be taken out-of-service due to plugging. There is a small amount of primary coolant flow reduction due to the sleeve for which an equivalent plugging sleeve to plug ratio is assigned based on sleeve length. The ratio is used to assess the final equivalent plugging percentage as an input to other safety analyses. Because the sleeve maintains the design basis requirements for the SG tubing, it is concluded that the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility 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.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Elecric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: March 27, 1997

Brief description of amendments: The proposed amendments would revise the Technical Specifications for the Brunswick Steam Electric Plant Units 1 and 2 to eliminate certain instrumentation response time testing requirements in accordance with NRC-approved BWR Owners Group Topical Report NEDO-32291-A, "System Analysis for the Elimination of Selected Response Time Testing Requirements."

Date of publication of individual notice in **Federal Register:** April 1, 1997(62 FR 15542)

Expiration date of individual notice: May 1, 1997

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota, and Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment requests: December 6, 1996

Description of amendment requests: The licensee requests amendments to the Prairie Island and Monticello operating licenses to reflect the Commission's approval of the transfer of control over the subject NRC licenses held by Northern States Power Company (NSP). On October 20, 1995, as supplemented August 28, 1996, NSP requested NRC approval for the transfer of control of licenses. The Commission is considering the issuance of amendments to the licenses to reflect the above transfer approved by the Commission on April 1, 1997 (62 FR 17882, dated April 11, 1997).

Date of individual notice in the **Federal Register:** April 11, 1997 (62 FR 17882)

Expiration date of individual notice: May 12, 1997

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 4, 1997

Brief description of amendment request: The proposed amendment would clarify the scope of the surveillance requirements for response time testing of instrumentation in the reactor protection system, isolation actuation system, and emergency core cooling system in the Technical Specifications for each unit (Sections 4.3.1.3, 4.3.2.3, and 4.3.3.3).

Date of publication of individual notice in **Federal Register:** April 17, 1997 (62 FR 17885)

Expiration date of individual notice: May 19, 1997

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant

Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 24, 1997, as supplemented March 27, 1997

Brief description of amendment: The proposed amendment will update the Safety Limit Minimum Critical Power Ratio (SLMCPR) in Technical Specification 2.1.2 and the associated Bases section to reflect the results of the latest cycle-specific calculation performed for the Pilgrim Nuclear Power Station Operating Cycle 12. In addition, the values provided in Note 5 of Table 3.2.C.1, which are based on the SLMCPR values, have been revised as a result of the changes to the SLMCPR value.

Date of issuance: April 7, 1997

Effective date: April 7, 1997

Amendment No.: 171

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 12, 1997 (62 FR 6568) The March 27, 1997, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1997 No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: March 27, 1997, as supplemented April 11, 1997.

Brief description of amendment: The amendments revise the Technical Specifications relating to response time testing requirements associated with the reactor protection system, isolation system, and emergency core cooling system.

Date of issuance: April 18, 1997

Effective date: April 18, 1997

Amendment Nos.: 184 and 215

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (62 FR 15542 dated April 1, 1997). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 1, 1997, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendments. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated April 18, 1997.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 21, 1995, as supplemented on October 24, 1996, and March 24, 1997.

Brief description of amendments: The amendments relocate certain cycle-specific parameter limits from the Technical Specifications (TS) to the Operating Limits Report. The cycle-specific parameter limits to be relocated are for Shutdown Rod Insertion Limit, Control Rod Insertion Limits, Axial Flux Difference Target Band, Heat Flux Hot Channel Factor [$F_Q(z)$], and Nuclear Enthalpy Rise Hot Channel Factor (F_N delta H). In addition, your March 24, 1997, submittal contained supplementary revisions to the Bases section associated with the above TS change. The supplementary Bases pages will be reviewed and transmitted to you under separate cover. Finally, Braidwood's TS 6.9.1.7 title was corrected.

Date of issuance: April 16, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 88, 88, 80, 80

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1997 (62 FR 7804). The March 24, 1997, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 29, 1996, as supplemented on January 21 and March 25, 1997.

Brief description of amendments: The amendments would: (1) revise Technical Specification (TS) 3.7.1.1, Action a., to require the unit to be in hot shutdown, rather than cold shutdown, for consistency with NUREG-1431, "Standard Technical Specifications for Westinghouse Plants," and add a new Action b. to clarify the shutdown requirements when there are more than three inoperable main steam line American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) safety valves on any

one steam generator; (2) revise TS Surveillance Requirement 4.7.1.1 to clarify that Specification 4.0.4 does not apply for entry into Mode 3 for Byron and Braidwood and for Braidwood only, delete the one-time requirements for Unit 1, Cycle 5 and Unit 2 after outage A2F27; (3) revise the maximum allowable power range neutron flux high trip setpoints in Table 3.7-1; (4) revise Table 3.7-2 to increase the as-found main steam safety valve (MSSV) lift setpoint tolerance to plus or minus 3 percent, provide an as-left setpoint tolerance of plus or minus 1 percent, and change a table notation; (5) delete the orifice size column from Table 3.7-2; and (6) revise the Bases for TS 3.7.1.1 to be consistent with the proposed changes to TS 3.7.1.1.

Date of issuance: April 15, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 87, 87, 79, and 79

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11486). The March 25, 1997, submittal provided additional information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 7, 1996, as supplemented March 12, 1997.

Brief description of amendment: The amendment revises Technical Specifications to allow the use of 10 CFR Part 50, Appendix J, Option B, "Performance-Based Containment Leak Rate Testing."

Date of issuance: April 10, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 190

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1996 (61 FR 47976) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 27, 1997, as supplemented on April 4, 1997

Brief description of amendment: The amendment revises technical specification surveillance requirement (SR) 4.3.1.3 for the Reactor Protection System Instrumentation to indicate that certain sensors are exempt from response time testing. A similar revision is made to SR 4.3.2.3 for the Isolation Actuation Instrumentation. Finally, SR 4.3.3.3 for the Emergency Core Cooling System Actuation Instrumentation is revised to indicate that the emergency core cooling system actuation instrumentation is exempt from response time testing.

Date of issuance: April 18, 1997

Effective date: April 18, 1997, with full implementation prior to entry into Operation Condition 2 or 3

Amendment No.: 111

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards considerations (NSHC): Yes (62 FR 15731 dated April 2, 1997). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 2, 1997, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated April 18, 1997.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina Date of application for amendments: January 6, 1997, as supplemented by letters dated April 10 and 15, 1997

Brief description of amendments: The amendments revise portions of the Technical Specifications to permit a one-time operation of the Containment Purge Ventilation System during Modes 3 and 4 after the current and forthcoming steam generator replacement outages.

Date of issuance: April 24, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 174 and 156

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 12, 1997 (62 FR 6574) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: September 9, 1996

Brief description of amendments: These amendments modify the design features section (Section 5.0) of the Technical Specifications (TSs) to make the design features section consistent with the intent of 10 CFR 50.36 and with the guidance provided in the NRC's Standard Technical Specifications, Westinghouse Plants (NUREG-1431, Revision 1).

Date of issuance: April 14, 1997

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 202 and 83

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64384) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library,

663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 19, 1996

Brief description of amendment: The amendment deletes the specific value for the total reactor coolant system volume from the Design Features section of the Technical Specifications.

Date of issuance: April 16, 1997

Effective date: April 16, 1997

Amendment No.: 181

Facility Operating License No. NPF-6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 19, 1996

Brief description of amendment: Request to add CENTS code as a Reference to the Technical Manual used for determining Core Operating Limits Report in the Technical Specifications.

Date of issuance: April 24, 1997

Effective date: April 24, 1997

Amendment No.: 182

Facility Operating License No. NPF-6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4347) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 10, 1997

Brief description of amendment: The amendment revises the technical specifications for reactor pressure vessel pressure and temperature limits by providing new limits that are valid to 12 effective full power years.

Date of issuance: April 14, 1997

Effective date: April 14, 1997

Amendment No.: 93

Facility Operating License No. NPF-47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1997 (62 FR 8798) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1997. No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 7, 1995, as supplemented by letters dated July 17, and December 26, 1996, and February 27, March 14, April 7, and April 17, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications by revising TS 3/4.8.1, "Electrical Power Systems - A.C. Sources," to incorporate recommendations and suggestions from (1) Generic Letter (GL) 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operations;" (2) GL 94-01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators from Plant Technical Specifications;" and (3) NUREG-1432, "Standard Technical Specifications Combustion Engineering Plants."

Date of issuance: April 21, 1997

Effective date: April 21, 1997, to be implemented within 60-days.

Amendment No.: 126

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 3, 1996 (61 FR 180) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 10, 1996 (TSCR 243)

Brief description of amendment: The amendment modifies the Technical Specifications (TS) by replacing the description of the existing permissive interlock from AC Voltage to Core Spray Booster Pump d/p Permissive: ≤ 21.2 psid for initiation of the automatic depressurization system, adds corresponding surveillance requirements, and adds notes clarifying functional requirements.

Date of Issuance: April 14, 1997

Effective date: April 14, 1997, with full implementation within 60 days

Amendment No.: 190

Facility Operating License No. DPR-16.

Date of initial notice in **Federal Register:** November 6, 1996 (61 FR 57485). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 14, 1997 No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: September 5, 1996

Brief description of amendment: The amendment deletes License Condition 2.C.(5), "Integrated Implementation Schedule" from the Millstone Unit 1 Operating License.

Date of issuance: April 15, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 100

Facility Operating License No. DPR-21: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** October 23, 1996 (61 FR 55036) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 5, 1996

Brief description of amendment: The amendment deletes a clause from Technical Specification 4.0.5.a. Specifically, this change deletes the clause "(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i)." The amendment also makes the appropriate changes to the Bases section.

Date of issuance: April 21, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 138

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1997 (62 FR 8800) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 4, 1996

Brief description of amendment: The amendment modifies Surveillance Requirements 4.8.1.1.2.a.6, 4.8.1.1.2.b, and 4.8.1.1.2.g.7 by specifying load bands in loading the diesel generator (DG) in lieu of the present requirement to load the DG greater than or equal to a given value. A footnote is being added to the three surveillance rerquirements to indicate that a momentary transient outside the load range shall not invalidate the test. The aassociated Bases sections have been revised to reflect the above changes.

Date of issuance: April 15, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 137

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11496) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

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 application for amendments: February 14, 1996, as supplemented by letter dated February 24, 1997.

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise 30 TS and add two new TS surveillance requirements to support implementation of extended fuel cycles at DCPP Unit Nos. 1 and 2. The specific TS changes include those for 9 trip actuating device tests, 12 fluid system actuation tests, and 11 miscellaneous tests. Two of the fluid system actuation tests are new TS surveillance requirements. The TS changes also involve adding a new frequency notation, "R24, REFUELING INTERVAL," to Table 1.1 of the TS. Also, a revision that applies to all subsequent TS changes involves revising the Bases Section of TS 4.0.2 to change the surveillance frequency from an 18-month surveillance interval to at least once each refueling interval.

Date of issuance: April 14, 1997

Effective date: April 14, 1997, to be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1 - 118; Unit 2 - 116

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1996 (61 FR 31183) The February 24, 1997, supplemental letter provided additional clarifying information and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

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 application for amendments: May 31, 1996, as supplemented by letter dated December 16, 1996.

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise 23 TS surveillance frequencies from at least once every 18 months to at least once per refueling outage (nominally 24 months) and to make administrative changes for 6 other TS to maintain consistency for TS that are not proposed for surveillance extension. The specific TS changes proposed include those for 2 response time tests, 3 containment spray system tests, and 24 ventilation system tests.

Date of issuance: April 14, 1997

Effective date: April 14, 1997, to be implemented within 90 days of issuance.

Amendment Nos.: Unit 1 - 119; Unit 2 - Amendment No. 117

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52966) The December 16, 1996, supplemental letter provided additional clarifying information and did not change the staff—s initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: November 22, 1996

Brief description of amendment: The amendment allows an increase in the U-235 enrichment of fuel stored in the fresh fuel storage racks or the spent fuel storage racks from 4.5 weight percent (w/o) U-235 to 5.0 w/o U-235.

Date of issuance: April 15, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 173

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1997 (62 FR 2182) The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated April 15, 1997, and an Environmental Assessment dated March 25, 1997. No significant hazards consideration comments received: Yes

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendments: December 3, 1996, as supplemented by letters dated January 27 and April 4, 1997

Brief description of amendments: The amendments revise Technical Specification 2.1.1.2 to change the Safety Limit Minimum Critical Power Ratio based on the cycle-specific analyses of Cycle 13 of a non-equilibrium core of all General Electric (GE) 9 fuel with varying enrichments and Cycle 14 of a non-equilibrium mixed core of GE13 and GE9 fuel.

Date of issuance: April 17, 1997

Effective date: For Cycle 13, as of the date of issuance; For Cycle 14, effective upon startup.

Amendment Nos.: 148 for Cycle 13; 149 for Cycle 14

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4349) The January 27 and April 4, 1997, letters provided additional information that did not change the scope of the December 3, 1996, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

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: April 4, 1996, as supplemented by letters dated January 10, February 7, February 13, March 17, March 19, March 20, March 25, April 1, April 6, April 10, April 11, and April 18, 1997.

Brief description of amendments: The amendments revise the Sequoyah Technical Specifications (TSs) and associated Bases to allow for the conversion from Westinghouse fuel to Framatome Cogema Fuel, designated Mark-BW. The planned fuel conversion begin with fuel cycle 9 for each unit. The amendments would revise the TSs to reflect the fuel design and vendor change. The licensee's evaluation was contained in Topical Report BAW-10220P, "Mark-BW Fuel Assembly Application for Sequoyah Nuclear Units 1 and 2."

Date of issuance: April 21, 1997

Effective date: As of the date of issuance to be implemented no later than 45 days of its issuance for Unit 1, and implemented upon installation of Framatome Cogema Fuel in the Unit 2 reactor vessel for Unit 2.

Amendment Nos.: 223 and 214

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the Technical Specifications and License Conditions.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20856) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1997 No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the

documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 6, 1997, 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 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, 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, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342 6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: April 14, 1997, as supplemented on April 17, April 22, and April 24, 1997.

Brief description of amendments: The proposed amendments requested (1) review and approval of an Unreviewed Safety Question (USQ) involving the control room operator dose resulting from an error in the secondary containment volume, (2) a change in Technical Specification (TS) Surveillance Requirements (SR) 4.7. P.2.b and 4.7. P.3 values for the allowed methyl iodide penetration for the standby gas treatment charcoal adsorbers, and (3) change of TS 5.2.C to

reflect the new calculated free volume of the secondary containment. The April 17, April 22 and April 24, 1997, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

Date of Issuance: April 25, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 158 and 153

Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the Technical Specifications. Press release issued requesting comments as to proposed no significant hazards consideration: Yes. April 22, 1997. Joliet Herald News. Comments received: No. The Commission's related evaluation of the amendments, finding of exigent circumstances, consultation with the State of Illinois and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 25, 1997.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450

NRC Project Director: Robert A. Capra

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: April 16, 1997, and as supplemented by a letter dated April 18, 1997

Brief description of amendment: This amendment changes the footnote in the Design Features Section 5.3.1 of the Technical Specifications to allow the use of ATRIUM-10 fuel in Operational Conditions 3 and 4.

Date of issuance: April 25, 1997

Effective date: As of the date of issuance to be implemented upon receipt.

Amendment No.: 138

Facility Operating License No. NPF-22: This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and reqeusted that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on April 24, 1997. The notice was published in the Wilkes-Barre Times Leader and the Berwick Press Enterprise on April 22-24, 1997. Public comments were received and have been addressed in the staff's safety evaluation.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Pennsylvania and final no significant hazards consideration determination are contained in a Safety Evaluation dated April 25, 1997.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[Doc. 97-11725 Filed 5-6-97; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

NUREG-1606, Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests or Experiments)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment NUREG-1606, a document that presents proposed regulatory guidance and staff interpretations regarding implementation of 10 CFR 50.59. Section 50.59 defines the conditions under which reactor licensees may make changes to the facility or procedures as described in the safety analysis report (SAR) and the conduct of tests or experiments not described in the SAR without prior NRC approval. Changes (including tests or experiments) involving a change to the technical specifications or an unreviewed safety question require NRC approval by a license amendment before implementation. The NRC has been evaluating the need to develop or clarify guidance on aspects related to 10 CFR 50.59 over the last several months. This draft NUREG-issued for comment, entitled "Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests or Experiments)" presents the results of the NRC's review. The draft report was forwarded to the Commission in SECY-97-035, dated February 12, 1997. The proposed regulatory guidance reaffirms existing regulatory practice in many areas; clarifies the NRC's expectations and positions in areas where industry practice or position differs from the NRC's expectations for implementation of 10 CFR 50.59; and establishes guidance in areas where previous guidance did not exist. The NUREG also briefly discusses some policy issues related to potential rulemaking for 10 CFR 50.59. This document is being issued to seek comment on whether the proposed regulatory guidance is clear and whether there are other areas in which guidance or changes to the rule would be useful.

Draft NUREG-1606 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington D.C. 20555-0001. A free single copy of draft NUREG-1606, to the extent of supply, may be requested by writing to Distribution Services, Printing, Graphics and Distribution Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001.

DATES: The comment period ends July 7, 1997. Comments received after that date will be considered to the extent practical. Following review of public comments, NRC will determine whether to issue a regulatory guide or to take other action. Any changes in industry guidance or requirements will be subject to 10 CFR 50.109 backfit review before issuance.

ADDRESSES: Submit written comments on the NRC document (NUREG-1606) to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001. Comments may be hand-delivered to 11545 Rockville Pike, Rockville Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW, Washington DC.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later) by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on

FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using NSAI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option for the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems", then selecting "Regulatory Information Mail." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu. For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415–5780, e-mail AXD3@nrc.gov.

The NUREG report is also electronically available for downloading from the Internet through the NRC home page at: "http://www.nrc.gov/NRC/NUREGS/SR1606/index.html". However, comments cannot be provided electronically by this means; see above discussion about the NRC BBS for electronic filing of comments.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen McKenna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, telephone (301) 415–2189; e-mail EMM@nrc.gov.

Dated at Rockville, Maryland, this 30th day of April 1997.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11833 Filed 5–6–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Procedures for PBGC Approval of Multiemployer Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB control number 1212–0031; expires July 31, 1997). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 7, 1997.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Sections 4201 through 4225 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), specify rules for when a withdrawal from a multiemployer plan occurs and how to calculate a withdrawing employer's withdrawal liability. Section 4220 of ERISA requires plans to seek PBGC approval if they adopt certain alternative rules authorized by sections 4201 through 4219. Any such alternative rule is effective only if the PBGC approves the plan amendment adopting the rule or, within 90 days after receiving notice and a copy of the amendment, fails to disapprove it. The PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC.

The PBGC's regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) includes, in § 4220.3, rules for requesting the PBGC's approval of an amendment. Section 4220.3(d) requires the submission of information that the PBGC needs to identify a plan and evaluate the risk of loss, if any, posed by the amendment (and, hence, determine whether it should disapprove the amendment). The regulation also permits submission of other information that the plan sponsor may consider pertinent to the request.

The collection of information under the regulation has been approved by OMB under control number 1212–0031 through July 31, 1997. The PBGC intends to request that OMB extend its approval for another three years. The PBGC estimates that it receives three submissions annually under the regulation and that each submission costs the submitting plan about $165 to have prepared by an outside consultant, for a total annual cost burden of $495.

The PBGC is soliciting public comments to—

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 2nd day of May, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–11898 Filed 5–6–97; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

[Docket No. A97–18]

Scotch Grove, Iowa 52331; (David J. Naylor, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued May 2, 1997.

Docket Number: A97–18.

Name of Affected Post Office: Scotch Grove, Iowa 52331.

Name(s) of Petitioner(s): David J. Naylor, *et al.*

Type of Determination: Closing.

Date of Filing of Appeal Papers: April 28, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 USC § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by May 13, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

Scotch Grove, Iowa 52331

Docket No. A97–18

April 28, 1997 Filing of Appeal letter

May 2, 1997 Commission Notice and Order of Filing of Appeal

May 23, 1997 Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)]

June 2, 1997 Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115(a) and (b)]

June 23, 1997 Postal Service's Answering Brief [see 39 CFR § 3001.115(c)]

July 8, 1997 Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)]

July 15, 1997 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116]

August 26, 1997 Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–11871 Filed 5–6–97; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22653; 812–10406]

Bond Fund Series, et al.; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bond Fund Series, Centennial America Fund, L.P., Centennial California Tax Exempt Trust, Centennial Government Trust, Centennial Money Market Trust, Centennial New York Tax Exempt Trust, Centennial Tax Exempt Trust, Oppenheimer California Municipal Fund, Oppenheimer Capital Appreciation Fund, Oppenheimer Cash Reserves, Oppenheimer Champion Income Fund, Oppenheimer Developing Markets Fund, Oppenheimer Discovery Fund, Oppenheimer Enterprise Fund, Oppenheimer Equity Income Fund, Oppenheimer Fund, Oppenheimer Global Emerging Growth Fund, Oppenheimer Global Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Growth Fund, Oppenheimer High Yield Fund, Oppenheimer Integrity Funds, Oppenheimer International Bond Fund, Oppenheimer International Growth Fund, Oppenheimer Limited-Term Government Fund, Oppenheimer Multi-State Municipal Trust, Oppenheimer Multiple Strategies Fund, Oppenheimer Municipal Bond Fund, Oppenheimer Municipal Fund, Oppenheimer New York Municipal Fund, Oppenheimer Quest Capital Value Fund, Inc., Oppenheimer Quest for Value Funds, Oppenheimer Real Asset Fund, Oppenheimer Strategic Income & Growth Fund, Oppenheimer Strategic Income Fund, Oppenheimer U.S. Government Trust, Oppenheimer Variable Account Funds, Panorama Series Fund, Inc., Rochester Fund Municipals, Rochester Portfolio Series, Daily Cash Accumulation Fund, Inc., Oppenheimer Main Street Funds, Inc.®, Oppenheimer Money Market Fund, Inc., Oppenheimer Quest Global Value Fund, Inc., Oppenheimer Quest Value Fund, Inc., Oppenheimer Series Fund, Inc., and Oppenheimer Total Return Fund, Inc. (collectively, the "Open-End Funds"); The New York Tax Exempt Income Fund, Inc., Oppenheimer Multi-Sector Income Trust, and Oppenheimer World Bond Fund (collectively, the "Closed-End Funds," together with the Open-End Funds, the "Funds"); OppenheimerFunds, Inc. (the "Adviser"), Centennial Asset Management Corporation ("CAMC"), and Oppenheimer Real Asset Management, Inc. ("ORAM").

RELEVANT ACT SECTIONS: Order requested (a) under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) of the Act and rule 2a–7 thereunder; (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and (c) pursuant to section 17(d) and rule 17(d)(1) thereunder to permit certain

transactions incident to deferred fee arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit each Fund to enter into deferred fee arrangements with certain of their trustees, directors, and general partners who are not interested persons of the Fund.

FILING DATES: The application was filed on October 17, 1996 and amended on April 11, 1997.

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 May 27, 1997 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 notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Two World Trade Center, New York, NY 10048–0203.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Open-End Funds is registered under the Act as an open-end management investment company and organized as a Maryland corporation, a Massachusetts business trust or a Delaware limited partnership. Several of the Open-End Funds are organized as series companies. Each Closed-End Fund is registered under the Act as a close-end management investment company and organized as a Massachusetts business trust or a Minnesota corporation. The Adviser, or its subsidiaries, CAMC or ORAM serves as the investment adviser for, and provides other services to, the Funds. SEC records show that the Adviser, CAMC, and ORAM are all registered under the Investment Advisers Act of 1940. Either OppenheimerFunds Distributor, Inc. ("OFDI"), a wholly-owned subsidiary of the Adviser, or CAMC serves as each Fund's principal underwriter.

2. The majority of directors of each Fund are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act ("Independent Directors"). Under the deferred fee arrangements proposed by applicants (the "Arrangements"), Independent Directors who receive directors fees from one or more of the Funds (the "Eligible Directors") will be entitled to defer to a later date the receipt of all or part of such fees.

3. The proposed deferred fee arrangements would be implemented by means of a deferred fee agreement (the "Agreement") entered into between an Eligible Director and the appropriate Fund. The Agreement would permit an Eligible Director to elect to defer receipt of all or a portion of his or her fees, in order to enable deferred payment of income taxes on such fees, and for other reasons. The Agreement may be amended from time to time, provided that any amendments to the Agreement will be limited to amendments which are not material (consistent with the terms of the Application) amendments made to conform to any applicable laws, or amendments that are approved by the SEC pursuant to an amendment of the order granted pursuant to the Application.

4. The deferred fees will be credited to bookkeeping accounts ("Deferred Fee Accounts") maintained by the Funds liable for the payment of such deferred fees and accrued income from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of one or more of the Funds (the "Investment Funds"). Under the Agreement, the deferred fees payable by a Fund with respect to a particular Eligible Director will be credited to the Deferred Fee Account as of the first business day following the date that such fees would have been paid to such Director.

5. Shares will not be designated as Underlying Securities, and Underlying Securities will not be purchased, if the purchase of such Underlying Securities would result in a violation of section 12(d)(1) of the Act.[1] Each Fund will vote shares of any affiliated Fund held pursuant to the Arrangements in proportion to the votes of all other holders of shares of such Fund.

6. Any participating money market series of the Funds that values its assets using the amortized cost method or penny rounding method will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. Applicants intend that the participating Funds will purchase and hold shares of Underlying Securities in amounts equal to the deemed investment of the deferred fee accounts of its Eligible Directors. If the participating Funds purchase shares of the Underlying Securities, the shares will be held solely in the name of the Funds. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Agreement are expected to be matched by an equal amount of assets (i.e., a direct investment in the Underlying Securities), which assets would not be held by the Fund if fees were paid on a current basis.

7. The Agreement provides that the obligations of each Fund to make payments of the Deferred Fee Accounts will be general obligations of each such Fund and payments made pursuant to the Agreement will be made from such Fund's general assets and property. With respect to the obligations created under the Agreement, the relationship of the Eligible Directors to the applicable Funds will be only that of general unsecured creditors. A Fund will be under no obligation to purchase, hold or dispose of any investment under the Agreement, but, if one or more of the Funds choose to purchase investments to cover its obligations under the Agreement, then any and all such investments will continue to be a part of the general assets and property of the Funds.

8. Under the Agreement, deferred director's fees (as determined by the adjusted value of the Deferred Fee Account) will become payable in cash upon the Eligible Director's retirement or disability in generally equal quarterly installments over a period of five years (unless the participating Fund has agreed to a longer payment period) beginning on the date of retirement or disability. Any one or more of the Funds may in the future establish a retirement plan for the Eligible Directors and amend the Agreement to permit payment of deferred director's fees

[1] The Agreement provides that the management of the participating Funds may designate new securities as the Underlying Securities if it reasonably believes the acquisition of the Underlying Securities would result in a violation by, or the objective and policies of, the participating Funds.

beginning on the date payments of retirement benefits to the Director commence under such retirement plan established by such Funds. In the event of the Eligible Director's death, remaining amounts payable to him or her under the Agreement will thereafter be payable to his or her designated beneficiary; in all other events, the Director's right to receive payments will be nontransferable. The Agreement provides that the Funds, in their sole discretion, have reserved the right to accelerate payment of amounts in the Deferred Fee Account at any time after the termination of the Eligible Director's service as director. In the event of the liquidation, dissolution or winding up of the appropriate Fund, the distribution of all or substantially all of the Fund's assets and property to its shareholders (unless such Fund's obligations under the Agreement have been assumed by a financially responsible party purchasing such assets), or a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund's Directors determine that the Agreement shall survive the merger or reorganization), all unpaid amounts in the Deferred Fee Account maintained by such Fund shall be paid in a lump sum to the Directors on the effective date thereof.[2]

9. Applicants request an order under section 6(c) of the Act granting relief from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(g), and 23(a) of the Act and rule 2a–7 thereunder to the extent necessary to permit the Funds to enter into deferred fee arrangements with Eligible Directors; under sections 6(c) and 17(b) of the Act granting relief from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds in connection with such arrangements; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds and Eligible Directors to effect certain transactions incident to such arrangements.[3]

[2] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Agreement if such obligations would constitute a violation of the 1940 Act by the assuming party. Applicants further acknowledge that if, and to the extent that, any such assumption would be prohibited by section 17 of the 1940 Act, any such assumption would be consummated only after the parties involved obtained exemptive relief, if any, which may be necessary.

[3] Applicants also request relief for all subsequently registered investment companies advised by the Adviser ("Future Funds") or entities controlling, controlled or under common control with the Adviser.

Applicants' Legal Analysis

1. Section 18(a) generally prohibits a closed-end investment company, and section 18(f)(1) generally prohibits a registered open-end investment company, from issuing senior securities. Section 18(c) prohibits any registered closed-end investment company from issuing or selling any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class or senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtained shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Agreement possesses none of the characteristics of senior securities that led to Congress's enactment of the restrictions on the issuance of such securities in these sections. Applicants contend that the Agreement will not: (a) Induce speculative investments by a Fund or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; (c) be inconsistent with the theory of mutuality of risk; or, (d) given the existence of similar deferred compensation agreements, confuse investors or convey a false impression as to the safety of their investments. Applicants state that all liabilities created by credits to the Deferred Fee Account under the Agreement are expected to be offset by essentially equal amounts of each Fund that would not otherwise exist if the fees were paid on a current basis. Applicants note that benefits payable under the Agreement are unsecured and their payment will not have preference or priority over the lawful claims of other creditors. Applicants state that the Agreement will not obligate any Fund to retain a Director in such capacity, nor will it obligate any Fund to pay any (or any particular level of) Director's fees to any Director. Rather, applicants submit it will merely permit an Eligible Director to elect to defer receipt of Director's fees which would otherwise be received on a current basis from the appropriate Fund or Funds.

2. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Applicants state that certain of the Funds have an investment policy prohibiting the purchase of investment company shares without shareholder approval, which would prevent such Funds from purchasing shares of any other of the Funds without such approval. Further, it is possible that one or more of the Future Funds may have similar investment policies. Applicants request an exemption form section 13(a)(3) to permit the Funds to invest in Underlying Securities without a shareholder vote. Applicants state that any relief granted from section 13(a)(3) of the Act would extend only to existing Funds that have an investment policy prohibiting or restricting investments in investment companies and to Future Funds that, at the time that the Adviser, or entities controlling, controlled by, or under common control with the Adviser, became their investment adviser, had an investment policy prohibiting or restricting investments in investment companies. Applicants state that they will provide notice of the Arrangements to shareholders in the registration statement of each affected Fund. Applicants submit that it is appropriate to exempt the affected Fund from the provisions of 13(a)(3) as to enable the affected Fund to invest in Underlying Securities pursuant to the Agreement without a shareholder vote. Applicants state that the value of the Underlying Securities will be *de minimis* in relation to the total net assets of the Funds. Applicants also note that, if they are prevented from investing in investment company shares, they will not be able to achieve the matching of Underlying Securities with the deemed investment of the Deferred Fee Accounts. Applicants believe that such matching is highly desirable because it will ensure that the deferred fee arrangements will not affect the net asset value of any Oppenheimer Fund's shares.

3. Rule 2a–7 imposes certain restrictions on the investments of money market funds that use the amortized cost method or the penny-rounding method of computing their per share price. Applicants believe that these restrictions would prohibit a Fund that is a money market fund from investing in the shares of any other Fund that is not a money market fund. Applicants state that any money market series of a Fund that values its assets using the amortized cost method will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Account to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability. Applicants contend that, under the circumstances, the underlying concerns that have led the SEC to prescribe

strictly the permissible characteristics of a money market Fund's portfolio securities are not present.

4. Sections 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. Applicants state that the Agreement would set forth any restrictions on transferability or negotiability of the Eligible Director's benefits, and such restrictions are included primarily to benefit the Eligible Directors and would not adversely affect the interests of any shareholder of any Fund.

5. Sections 22(g) and 23(a) generally prohibit registered open-end investment companies and registered closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants believe that these provisions are primarily concerned with the dilative effect on the equity and voting power of the common stock of, or shares of beneficial interest in, an investment company if securities are issued for consideration not readily valued. Applicants assert that interests under the Agreement will not entitle Eligible Directors to any vote as shareholders or to participate in the profits and gains of any of the Funds. Applicants also submit that the Agreement would provide for deferral of payment of fees that would be payable independent of the Agreement, and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicants state that the Funds that are advised by the same entity may be "affiliated persons" of one another under section 2(a)(3)(C) of the Act. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants contend that, as a result of the Funds' undertaking to vote the shares of an affiliated Fund in proportion to the votes of all other holders of such shares, control of the issuer of the Underlying Securities will remain unchanged. Applicants further submit that permitting the proposed transactions would facilitate the matching of each Fund's liability for deferred Director's fees with the Underlying Securities that would determine the amount of such Fund's liability.

7. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Applicants assert that the proposed transactions satisfy the criteria of section 17(b).

8. Applicants note that sales of shares of the Funds made available for deemed investment under the Agreement will be made on the same terms and conditions as are applicable to sales of the same securities to unaffiliated parties, and the Agreement provides that management may change the designation of Underlying Securities if the purchase of such securities would violate the policies of the participating Fund.

9. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by policy and provisions of the Act. Applicants assert that the proposed transactions satisfy this standard.

10. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant. Rule 17d–1 under the Act provides that the SEC may, by order upon application, grant exemptions from the prohibitions of section 17(d) and rule 17d–1. Rule 17d–1(b) further provides that, in passing upon such an application, the SEC will consider whether the participation of the registered investment company in such enterprise, arrangement, or plan is consistent with the policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

11. Applicants contend that the participating Eligible Director will neither directly nor indirectly receive benefits which would otherwise inure to the Funds or their shareholders. Applicants state that deferral of an Eligible Director's fees in accordance with the Agreement would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Applicants submit that when all payments have been made to a participating Eligible Director, the Director will be in a position relative to the Funds no better than if any deferred fees had been paid to such Director on a current basis and invested in shares of the Underlying Securities. Applicants believe that the Agreement will not constitute a joint or joint and several participation by any Fund with an affiliated person on a basis different from or less advantageous than that of the affiliated person.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market series of a Fund that values its assets using the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deferred fees and the assets that offset the liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11840 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22650/813–164]

Project Capital 1995, LLC; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Project Capital 1995, LLC, which was formerly SASM&F Investment Fund, LLC (the "Investment Fund"), all existing pooled investments vehicles identical in all material respects (other than investment objective and strategy) that have been or

may be offered to the same class of investors as those investing in the Investment Fund (the "Existing Funds"), and all subsequent pooled investment vehicles identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors as those investing in the Investment Fund (the "Subsequent Funds") (together, the Investment Fund, the Existing Funds, and the Subsequent Funds are referred to herein as the "Funds").

RELEVANT ACT SECTIONS: Order requested pursuant to sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of sections 17 (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of sections 30 (a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would exempt them from most provisions of the Act and would permit certain affiliated and joint transactions incident to the creation and operation of employees' securities companies within the meanings of section 2(a)(13) of the Act.

FILING DATE: The application was filed on September 18, 1995 and amended on February 7, 1996, and March 26, 1997.

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 pm on May 27, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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. Project Capital 1995, LLC, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Investment Fund is a Delaware limited liability company formed pursuant to a limited liability company agreement (the "Investment Fund Agreement"). The Investment Fund will operate as a non-diversified, closed-end, management investment company within the meaning of the Act. The Applicants anticipate that each Subsequent Fund, if any, will also be structured as a limited liability company, although a Subsequent Fund could be structured as a domestic or offshore general partnership, limited partnership or corporation. The organizational documents for any Subsequent Funds will be substantially similar in all material respects to the Investment Fund Agreement, other than the provisions relating to investment objectives or strategies of a Subsequent Fund and for any operational differences related to the form of organization of a Subsequent Fund.

2. Interests in the Funds ("Units") will be offered and sold by the Funds in reliance upon an exemption from registration under the Securities Act of 1933 ("Securities Act"). No fee of any kind will be charged in connection with the sale of Units of the Funds. Each Fund will offer Units solely to persons ("Eligible Investors") who meet the following criteria at the time of investment: (a) Certain current or former key administrative employees, partners and lawyers employed by Skadden, Arps, Slate, Meagher & Flom LLP, a New York limited liability partnership ("Skadden Arps LLP"), Skadden, Arps, Slate, Meagher, & Flom (International), Skadden, Arps, Slate, Meagher & Flom (Illinois), and Skadden, Arps, Slate, Meagher & Flom (Delaware) (collectively with Skadden Arps LLP, "Skadden Arps"), the immediate family members of such persons, or trusts or other entities the sole beneficiaries of which consist of such persons or the immediate family members of such persons; and (b) who are (i) "accredited investors" as that term is defined in rule 501(a)(6) of Regulation D under the Securities Act and (ii) sophisticated in investment matters. An individual may make additional capital contributions to a Fund only if he or she meets the criteria for an Eligible Investor contained herein at the time such additional capital contributions are made. The specific investment objective and strategies for each Fund will be set forth in the organizational documents with respect to such Fund, and each Eligible Investor will receive a copy prior to his or her investment in such Fund.

3. Substantially all of the present and former partners and a small number of all the employees of Skadden Arps currently qualify as Eligible Investors. Such Eligible Investors have significant exposure directly or indirectly in matters related to investment banking, financial services, securities or investment businesses. Most Eligible Investors have had substantial experience acting as legal counsel in one or more of the foregoing businesses.

4. The formation of the Investment Fund and any Subsequent Fund is intended to create an opportunity for the Eligible Investors to invest in ventures in which they, as individuals, might not have otherwise been able to invest in and to reap returns on their investment which may be greater proportionately than returns they can obtain on individual investments. Each Fund may invest in opportunities offered to or by, or that come to the attention of, Skadden Arps, including opportunities in which Skadden Arps (including Eligible Investors who elect to participate in a Fund ("Members")) may invest for their own respective accounts. Such opportunities may include separate accounts with registered or unregistered investment advisers, investment in other pooled investment vehicles such as registered investment companies, investment companies exempt from registration under the Act, commodity pools, real estate investment funds, and other securities investments. The Funds do not intend to act as a lender to their affiliates except to the extent that the Funds may invest in debt securities issued by entities that might fall within the definition of affiliate (if Skadden Arps owns 5% of the outstanding voting securities in such entity). The Funds will limit their investments in publicly offered registered investment companies to the limitations set forth in section 12(d)(1) of the Act.

5. Some of the investment opportunities described above may involve parties in which Skadden Arps was, is or will be, acting as legal counsel. To the extent a Fund may engage Skadden Arps to perform legal services on behalf of an entity in which it has invested (each such entity, a "Portfolio Company"), any such services will be performed in accordance with the terms of the Act, including section 17(e). Any such amounts paid to Skadden Arps will not be directly payable by a Fund, but by the Portfolio Company. Moreover, all such services shall be provided to the Portfolio Company on behalf of the

Fund at Skadden Arps' actual cost and shall not include any profit component. Such fees shall not be for brokerage services of any kind or in any matter connected to the purchase or sale of securities or other property which a Fund may hold.

6. While a Fund will not pay Skadden Arps any form of compensation, including commissions, for services (including legal services that Skadden Arps might render to a Portfolio Company), it may pay Skadden Arps fees equal to, but not greater than, the actual out-of-pocket costs directly incurred by Skadden Arps in disposing of an investment in a Portfolio Company. Skadden Arps may be reimbursed in various forms provided that there will be no allocation of any of Skadden Arps' operating expenses to a Fund. Rather, any such reimbursement shall be for reasonable and necessary out-of-pocket costs directly associated with making investments on behalf of a Fund. Such reimbursements could be for filing fees, registration fees, mailing costs, telephone charges and other similar costs relating solely to such investments. Skadden Arps will bear all expenses in connection with the organization and internal operations of the Funds, including all administrative and overhead expenses.

7. Administration of the Investment Fund will be vested in the administrator (the "Administrator"). The Administrator may, but is not required to, be a member in the Investment Fund. The Administrator will inform Eligible Investors from time to time of the availability of investment opportunities that come to its attention through Skadden Arps. The Administrator will make specific investment opportunities available to Eligible Investors who will elect whether or not to participate in the particular investment (each particular investment, an "Investment"). The Administrator will not recommend Investments or exercise investment discretion, provided however that the Administrator may select "temporary investments" (as defined below).[1] All investment decisions to make a particular Investment in the Investment Fund will be made by the Members on an individual basis. The Investment Fund Agreement provides that the Investment Fund will bear its own expenses. No management fee or other compensation will be paid by the Investment Fund or the Members to the Administrator for its services in such capacity.

8. Capital contributions made to the Investment Fund by participating Members will be allocated pro-rata to the capital accounts relating to a particular Investment for such participating Members. Members who elect not to participate in a particular Investment will have no interest in such Investment.

9. For any particular Investment with respect to which a Member has elected to participate by making a capital contribution, there shall be established for each such Member on the books of the Investment Fund a capital account, which shall equal the sum of all capital contributions of such Member made with respect to such Investment: (a) Increased by such Member's allocable share of income and gain attributable to such Investment as provided in the Investment Fund's organizational documents; and (b) decreased by (i) such Member's share of deduction, loss and expense attributable to such Investment, and (ii) the cash amount or fair market value at the time of the distribution of all distributions of cash or other property made by the Investment Fund to such Member with respect to such Investment. As of the end of each fiscal year, items of Investment Fund income, gain, loss, deduction and expenses attributable to an Investment shall be allocated to the relevant capital accounts in proportion to the respective aggregate amounts of the relevant Members' capital contributions to such Investment; provided that, in accordance with applicable Delaware law, the capital account balances of the Members shall not be reduced below zero.

10. It is anticipated that capital will be contributed to the Investment Fund (and any Subsequent Fund) only in connection with the funding of an Investment. Pending the payment of the full purchase price for an Investment, funds contributed to the Investment Fund (or any Subsequent Fund) will be invested in: (i) United States government obligations with maturities of not longer than one year and one day, (ii) commercial paper with maturities not longer than six months and one day and having a rating assigned to such commercial paper by a nationally recognized statistical rating organization equal to one of the two highest ratings categories assigned by such organization, or (iii) any money market fund (collectively, "Temporary Investments").

11. The value of the Member's capital accounts will be determined at such times as the Tax Matters Partner (who will be the managing director of Skadden Arps) deems appropriate or necessary; however, such valuation will be done at least annually at the Investment Fund's fiscal year-end for allocation purposes. Each Member directs his or her capital contributions to particular Investments and in all material respects takes responsibility for his or her individual investment decisions, leaving the Administrator with primarily an administrative role. The Tax Matters partner will only cause the assets held by the Investment Fund to be valued when such valuation is necessary or appropriate for the administration of the Investment Fund. Valuations of a Member's interest at other times remains the responsibility of the individual Member. The Investment Fund will maintain records of all financial statements received from the issuers of the Investments, and will make such records available for inspection by its Members. Each Fund, as soon as practicable after the end of each tax year of that fund, will transmit a report to each Member setting out information with respect to that Member's distributive share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Fund during that year.

12. The Tax Matters partner will value the assets held in a Member's capital account at the current market price (closing price) in the case of marketable securities. Private placements (consisting mostly of limited partnership interests), which typically will comprise most of the investments, will be valued in accordance with the values provided by the vehicles in which a Fund invests. All other securities will be valued at the lower of cost or book value. The foregoing valuation method is applicable in each instance in which a value is assigned to interests in a Fund.

13. The amount of the initial capital contribution to the Investment Fund (and to any Subsequent Fund) will be dependent upon the size and terms of the initial investment opportunity of such Fund. Members will not be entitled to redeem their interest in the Investment Fund. A member will be permitted to transfer his or her interest only with the express consent of a majority of the non-transferring Members.

14. The Investment Fund Agreement provides that the Administrator may require a Member to withdraw from the Investment Fund if the Administrator, in its sole discretion, deems such withdrawal in the best interest of the Investment Fund. The Administrator

[1] The Applicants will consider, as necessary, whether Skadden Arps or the Administrator will be required to register as an investment adviser under the Investment Advisers Act of 1940.

does not intend to require a Member to withdraw. The following circumstances could warrant the withdrawal of a Member: (a) If a Member ceases to be an Accredited Investor or is no longer deemed to be able to bear the economic risk of investment in a Fund; (b) adverse tax consequences were to inure to the Investment Fund if a particular Member were to remain; and (c) a situation in which the continued membership would violate applicable law or regulation. If a Member is required to withdraw, the Investment Fund will make a distribution-in-kind to the withdrawing Member or such Member will otherwise be paid his or her pro-rata interest in the Investment Fund, as determined by the Administrator to be fair and reasonable in the circumstances. If a Member is terminated by Skadden Arps, such Member will either continue to be a Member of the Fund, or receive a distribution-in-kind or otherwise be paid his pro-rata interest in the Fund, as determined by the Administrator to be fair and reasonable.

15. In the event of death of a Member, such Member's estate shall be substituted as a Member, and such substituted Member shall succeed to the economic attributes of the deceased Member's interest in the Fund, but shall not be admitted as a substitute Member unless the majority of the remaining Members consent to such admission.

16. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act except section 9, section 17 (other than certain provisions of sections 17 (a), (d), (f), (g) and (j) as described in the application), section 30 (other than certain provisions of sections 30 (a), (b), (e) and (h) as described in the application), and sections 36 through 53, and the rules and regulations thereunder.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers, by former employees of such employers, or by members of the immediate family of such employers, persons on retainer, or former employees.

2. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, specified provisions of the Act shall be applicable to such company and to other persons in their transactions and relations with such company as though such company were registered under the Act, if the SEC deems it necessary and appropriate in the public interest or for the protection of investors.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Applicants request an exemption from the provisions of section 17(a) to the extent necessary to permit a Fund: (1) To invest in companies, partnerships or other investment vehicles offered, sponsored or managed by Skadden Arps or any affiliated person as defined in section 2(a)(3) of the Act ("Affiliated Person") thereof; (2) to invest in securities of issuers for which Skadden Arps or any Affiliated Person thereof have performed services and from which they may have received fees; (3) to purchase interests in any company or other investment vehicle: (i) In which Skadden Arps or its partners or employees own 5% or more of the voting securities or (ii) that is otherwise an Affiliated Person of the Fund or Skadden Arps; (4) to participate as a selling security-holder in a public offering in which Skadden Arps or any Affiliated Person acts or represents a member of the selling group; (5) to purchase short-term instruments from, or sell such instruments to, Skadden Arps or any Affiliated Person thereof at market value; and (6) to enter into repurchase transactions with Skadden Arps or any Affiliated Person thereof pending investment of the Fund's liquid funds. Applicants state that a Fund purchasing any short-term instrument from Skadden Arps or any Affiliated Person thereof will pay no fee in connection with that purchase.

4. Applicants assert that the community of interest among the Members and Skadden Arps will serve to reduce the risk of abuse in transactions involving a Fund and Skadden Arps or any Affiliated Person thereof. Applicants also note that the Members will be informed in the Fund's communications relating to a particular Investment opportunity of the possible extent of the Fund's dealings with Skadden Arps or any Affiliated Person thereof.

5. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person unless the transaction has been approved by order of the SEC. Applicants request an exemption pursuant to section 17(d) and rule 17d–1 to the extent necessary to permit a Fund to make an investment in an entity in which a Fund or Skadden Arps, or any Affiliated Person of the Fund or Skadden Arps, or an Affiliated Person of such person is a participant or plans concurrently or otherwise directly or indirectly to become a participant.

6. Applicants state that joint transactions in which a Fund could participate might include the following: (1) An investment by one or more Funds in a security (a) in which Skadden Arps or an Affiliated Person thereof, another Fund, or their transferees who agree to be bound by the terms of the conditions in the application (the "Affiliates" or individually an "Affiliate") is a participant or plans to become a participant or (b) with respect to which Skadden Arps or any Affiliated Person thereof is entitled to receive fees of any kind, including, but not limited to, legal fees, placement fees, investment banking fees, or brokerage commissions, or other economic benefits or interests; (2) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by Skadden Arps or any Affiliated Person thereof; and (3) an investment by one or more Funds in a security in which an Affiliate is a participant, or plans to become a participant, including situations in which an affiliate has a partnership or other interest in, or compensation arrangement with, such issuer, sponsor or offeror.

7. Applicants assert that the relief sought is consistent with section 17's objective of preventing an Affiliated Person of a registered investment company from injuring the interests of the company's shareholders by causing the company to participate in a joint endeavor on a basis different from, and less advantageous than, that of a related party. Applicants state that each Eligible Investor, not the Fund, evaluates Investment opportunities and decides individually whether or not he or she wishes to participate in any particular Investment. In addition, Applicants assert that, in light of Skadden Arps' purpose of establishing the Funds to reward Eligible Investors and to attract highly-qualified personnel to Skadden Arps, the possibility is minimal that an affiliated-party investor will enter into a

transaction with a Fund with the intent of disadvantaging the Fund.

8. Applicants submit that strict compliance with section 17(d) would cause the Funds to forego Investment opportunities simply because a Member, Skadden Arps or other Affiliated Persons of the Fund also had or contemplated making a similar investment. In addition, because attractive investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, applicants state that there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants assert that the flexibility to structure co- and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

9. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from the requirement contained in section 17(f) and rule 17f–1 thereunder that a Fund's custodial agreement must be in writing and transmitted to the SEC. Applicants state that, because there is a close association between Skadden Arps and the applicants, requiring a written contract and transmission to the SEC would unnecessarily burden and cause unnecessary expense to applicants.

10. Section 17(g) and rule 17g–1 thereunder generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request exemption from the requirement contained in section 17(g) and in rule 17g–1 that an administrator who is not an "interested person" of the respective Funds take certain actions and make certain approvals concerning bonding. Applicants request that the actions and approvals required to be taken by the Administrator may and will be taken by it, regardless of whether it is deemed to be an "interested person" of the Funds. Applicants state that, because the administrator is likely to be considered an "interested person" of each Fund, applicants could not comply with rule 17g–1 without such relief.

11. Section 17(j) and rule 17j–1 thereunder make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connections with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from the requirements of rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary and because the exemption is consistent with the policy of the Act. Applicants assert that requiring the Funds to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose in light of, among other things, the community of interests among the Members of the Funds by virtue of their common association with Skadden Arps and the fact that the Investments of a Fund would generally not be investments that usually would be offered to Members, including Members who would be deemed access persons, as individual investors. Applicants contend that the requested exemption is consistent with the purposes of the Act because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Funds.

12. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial matters. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each fund to report annually to its Members in the manner prescribed for the Investment Fund by the Investment Fund Agreement. Applicants also request exemption from section 30(h) to the extent necessary to exempt the Administrator and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, with respect to their ownership of Units in the Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the Administrator determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to Members of the participating Fund and do not involve overreaching of the Fund or its Members on the part of any person concerned; and (b) the transaction is consistent with the interests of the Members of the participating Fund, the Fund's organizational documents and the Fund's reports to its Members.

In addition, the Administrator will record and preserve a description of such affiliated transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least two years thereafter, and will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. No purchases or sales will be made from or to an entity affiliated with a Fund by reason of a 5% or more investment in such entity by the Administrator.

3. The Administrator will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Administrator will not make available to the Members of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor prior to disposing of all or part of its investment: (a) Gives the Members of the participating Fund holding such investment sufficient, but not less than one day's notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Members of the participation Fund holding such

investment have the opportunity to dispose of their investment prior to or concurrently, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term "Co-Investor" means any person who is: (a) an Affiliated person of the Fund; (b) Skadden Arps and any entities controlled by Skadden Arps; (c) a current partner, lawyer, or employee of Skadden Arps; (d) an investment vehicle offered, sponsored, or managed by Skadden Arps or an Affiliated Person of Skadden Arps; (e) any entity with respect to which Skadden Arps provides, or has provided, services, and from which it may have received fees in connection with such investment; or (f) a company in which the Administrator acts as an officer, director, or general partner, or has a similar capacity to control the sale or disposition of the company's securities. The restriction contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. Each Fund will send to each Member who had an interest in that Fund at any time during the fiscal year then ended, financial statements. Such financial statements may be unaudited. In addition, within 90 days after the end of each fiscal year of each Fund or as soon as practicable thereafter, each Fund shall send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund will maintain and preserve, for the life of each such Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Members, and agree that all such records will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11841 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act 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 meetings during the week of May 12, 1997.

An open meeting will be held on Monday, May 12, 1997, at 2:00 p.m. A closed meeting will be held on Thursday, May 15, 1997, at 10:00 a.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 the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, May 12, 1997, at 2:00 p.m., will be:

(1) Consideration of whether to adopt amendments to rule 17f–5 under the Investment Company Act of 1940 (the "Act"), the rule which governs the custody of assets of registered management investment companies ("funds") outside the United States. The amendments would (i) Revise the findings that must be made in connection with foreign custody arrangements, (ii) permit fund boards of directors to delegate their responsibilities to select and monitor foreign custodians, and (iii) expand the class of eligible foreign custodians.

FOR FURTHER INFORMATION, contact Robin S. Gross at (202) 942–0640.

(2) Consideration of whether to adopt rules and rule amendments under the Investment Advisers Act of 1940 to implement certain provisions of the Investment Advisers Supervision Coordination Act (the "Coordination Act"). The Coordination Act amended the Advisers Act to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states. Generally, the Coordination Act provides for the Commission regulation of advisers with $25 million or more of assets under management, and state regulation of advisers with less than $25 million of assets under management. The rules and rule amendments would: (i) Establish the process by which advisers that are currently registered with the Commission determine their status as Commission- or state-registered advisers after July 8, 1997, the effective date of the Coordination Act; (ii) amend Form ADV to require advisers to report annually to the Commission information relevant to their status as Commission-registered advisers; (iii) relieve advisers of the burden of having frequently to register and then de-register with the Commission as a result of changes in the amount of their assets under management; (iv) provide certain exemptions from the prohibition on registration with the Commission; (v) define certain terms used in the Coordination Act; and (vi) clarify how advisers should count clients for purposes of both the new national de minimis exemption from state regulation and the federal de minimis exemption from Commission registration.

FOR FURTHER INFORMATION, contact Catherine M. Saadeh at (202) 942–0650, or Cynthia G. Pugh at (202) 942–0673.

The subject matter of the closed meeting scheduled for Thursday, May 15, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

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: the Office of the Secretary at (202) 942–7070.

Dated: May 2, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–11976 Filed 5–5–97; 11:03 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38561; File No. SR–DTC–97–01]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Implementing the Dividend Processing Phase of the Custody Service for Non-depository Eligible Securities

April 30, 1997.

On January 23, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–97–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 3, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change implements the third phase of DTC's custody service to offer to its participants dividend processing services for certain non-depository eligible securities.[3] In connection with the new service, DTC will announce, collect, and distribute dividend, interest, periodic principal, and other distributions ("dividend payments") to participants that hold securities through DTC's custody service ("custody issues").

To facilitate the collection of dividends on custody issues and to permit the book-entry movement of securities when a customer wishes to move its account from one participant to another, DTC proposes to register certificates held in its custody service in a second nominee name, DTC & Co., when requested to do so by a participant.[4] Such registration is necessary so DTC under its nominee name DTC & Co. can collect dividend payments relating to custody issues directly from paying agents.[5] Without such registration, paying agents would disburse individual dividend payments for the custody issues directly to the participant or participants' customer instead of to DTC.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act provides that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because implementation of the dividend processing phase should increase the use of the custody service by holders of custody issues. This increase should result in more securities being held at the depository facilities of a registered clearing agency, DTC, and being subject to DTC's safekeeping procedures. Furthermore, because certificates held through the custody service must be registered in DTC's second nominee name, DTC & Co, to be eligible for dividend processing, such registration will permit the book-entry movement of custody issues if a customer wishes to move its position from one participant to another. Accordingly, the dividend processing feature should help to reduce the processing of physical certificates and therefore reduce the associated risks.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11792 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 USC 78s(b)(1).

[2] Securities Exchange Act Release No. 38323 (February 21, 1997), 62 FR 9473.

[3] For a more detailed description of DTC's custody service, refer to Securities Exchange Act Release No. 37314 (June 14, 1996), 61 FR 29158 [File No. SR–DTC–96–08] (order approving a proposed rule change establishing custody service) ("June approval order").

[4] In the June approval order, the Commission noted that securities certificates will be held in customer or firm name only and would not be transferred into DTC's nominee name utilized for regular depository eligible securities, Cede & Co. Although the basic custody service and the redemption and reorganization services phases do not require custody issues to be registered in the new DTC nominee name, participants wishing to use the dividend processing feature of the custody service for custody issues must have such custody issues registered in DTC's new nominee name of DTC & Co.

[5] Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

[6] 15 USC 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38564; File No. SR–DTC–96–22]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

April 30, 1997.

On December 4, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–96–22) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 5, 1997.[2] The Commission received one comment letter in response to the filing.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends DTC's charge back and return of funds policies to shorten from ten business days to one business day after the payable date the period within which a paying agent can request that DTC return principal and income ("P&I") payments that have been allocated to participants.[4] The rule change also amends the procedure so if an agent requests the return of a P&I payment more than one business day after a payable date, DTC will work with the agent and participant to resolve the matter; but DTC will not return the allocated payments without the participant's consent.

Under its previous procedures,[5] if the paying agent notified DTC in writing

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38340 (February 26, 1997), 62 FR 10104.

[3] Letter from Thomas S. Dillon, Chairman, PSA Corporate Bond Operations Committee (March 26, 1997).

[4] Although the rule change reduces the time within which a paying agent can request a reversal of allocated funds from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable date ("P+1"), DTC would likely notify its participants on the morning of the following business day ("P+2"). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participants' daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation with Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC (December 18, 1996).

[5] For a complete description of the procedures relating to DTC's procedures, refer to Securities

within ten business days of a payable date that an issuer failed to provide the paying agent with sufficient funds to cover the payments or that an issuer was bankrupt,[6] DTC would return P&I payments to the paying agent after the funds had been credited to the accounts of DTC participants.[7] However, PSA The Bond Market Trade Association ("PSA") expressed concern with the previous procedures and the associated risk of loss placed upon DTC participants in the event a payment was returned to a paying agent.[8] In response, DTC convened a joint working group of paying agents, PSA representatives, and other interested parties.[9] In October 1996, the working group concluded that DTC should reduce the period within which DTC will return funds to paying agents from ten business days to one business day. DTC concurred with the working group's recommendation and has amended its procedures accordingly.

II. Comment Letter

The Commission received one comment letter in response to DTC's notice of a proposed rule change.[10] The commenter strongly supports the rule change and believes that the rule change will make significant progress toward achieving finality of payment that it believes the market expects. The commenter also noted that DTC's previous policy was inconsistent with market perceptions regarding the finality of DTC payments and contrary to widely accepted payment principles favoring finality.

III. Discussion

Section 17A(b)(3)(F)[11] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's rule change is consistent with DTC's obligations under the Act because the amended procedures should finalize P&I payments sooner which should reduce the uncertainty and potential risk of loss DTC's previous procedures placed on its participants.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–22) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11793 Filed 5–6–97; 8:45 am]

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Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR–DTC–86–03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR–DTC–86–04] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR–DTC–88–17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back procedures apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR–DTC–95–03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

[6] DTC's procedures also allows DTC to return previously credited payments due to an error by the paying agent upon written request from a paying agent within ten business days of the payable date. The rule change does not alter this portion of DTC's procedures.

[7] The return of P&I payments to paying agents after the funds have been credited to the accounts of DTC participants is commonly referred to as a "clawback."

[8] Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

[9] The working group is composed of representatives from the Corporate Trust Advisory Board of the American Bankers Association, the Bank Depository User Group, the Corporate Trust Advisory Committee of the Corporate Fiduciaries Association of New York City, the New York Clearing House—Securities Committee, PSA, the Securities Indnstry Association, and DTC.

[10] *Supra* note 2.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38567; File No. SR–NYSE–97–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Consisting of an Information Memo Relating to Electronic Delivery of Information to Customers by Exchange Members and Member Organizations

May 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 24, 1997[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed with the Commission an Information Memo ("Memo") setting forth the Exchange's policy regarding electronic delivery of information required under Exchange rules to be furnished to customers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission, in Release Nos. 34–37182[3] and 33–7233,[4] set forth standards whereby broker-dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media provided that they comply with certain prescribed standards.

The Information Memo (attached as Exhibit A to this notice) establishes Exchange policy regarding electronic

[1] 15 U.S.C. 78s(b)(1).

[2] On April 24, 1997, the NYSE amended the Information Memo, attached as Exhibit A to this notice. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 24, 1997.

[3] *See*, Securities Exchange Act Release No. 37182, May 9, 1996; 61 FR 24644, May 15, 1996, (Commission's interpretation concerning the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Act and the rules thereunder).

[4] *See*, Securities Act Release No. 7233, Oct. 6, 1995; 60 FR 53458, Oct. 13, 1995, (Commission's interpretation concerning the use of electronic media as a means of delivering information required to be disseminated pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940).

delivery of information required under Exchange rules to be furnished to customers. Under this proposed Exchange policy, members and member organizations will be allowed to electronically transmit documents required to be furnished to customers under Exchange rules, provided that they adhere to the Commission's established standards. The Memo summarizes the Commission standards, which address format, content, access, evidence of receipt of delivery, and consent for delivery of personal financial information. The Memo also sets forth a list of current Exchange rules that require members and member organizations of furnish specific information to customers for which electronic delivery may be used in accordance with the Commission Releases. The Exchange believes this list is complete. Further, it is the Exchange's intention that the policy outlined in this Memo cover all communications required to be sent to customers by firms pursuant to Exchange rules. The list includes:

a. *Rule 382(c) (Carrying Agreements)* requires notification to each customer, whose account is introduced on a fully disclosed basis, of the existence of a clearing agreement, the relationship between the introducing and carrying organization, and the allocation of responsibilities between the respective parties.

b. *Rule 409 (Statements of Accounts to Customers)* requires delivery of statements of accounts showing security and money positions and entries at least quarterly to all accounts having an entry, money, or security position during the preceding quarter.[5]

c. *Rule 451 (Transmission of Proxy Material)* requires member organizations to transmit proxy materials and annual reports to beneficial owners of stock which stock is in the member's possession and control or to others specified in the Rule.

d. *Rule 465 (Transmission of Interim Reports and Other Material)* requires transmittal of interim reports of earnings and other material to beneficial owners of stock which stock is held by the member organization.

e. *Rule 721(c) (Opening of Accounts)* requires that background and financial information on every new options account customer be sent to such customer for verification within fifteen days after the account is approved for options transactions.

f. *Rule 721(e)(5) (Uncovered Short Options—Disclosure)* requires that a written description of the risks inherent in writing uncovered short option transactions be furnished to applicable customers.

g. *Rule 725 (Confirmations)* requires member organizations to furnish customers with a written confirmation of each transaction in optio- contracts.

h. *Rule 726(a) (Delivery of Options Disclosure Document)* requires delivery of a current Options Disclosure Document to a customer at or prior to the time the account is approved for trading options. Thereafter, delivery must be made of amendments or revisions to the Options Disclosure Document to every customer approved for trading the kind of option covered by the Disclosure Document.

i. *Rule 726(b) (Prospectus)* requires that a current prospectus of The Options Clearing Corporation shall be delivered to each customer who requests one.

j. *Rule 730 (Statements of Options Accounts)* requires that monthly statements be sent to options account holders.

k. *Rule 781(a) (Allocation of Exercise Assignment Notices)* requires notification to customers of the method used to allocate exercise notices in customer's accounts.

The Exchange believes that use of electronic media to satisfy delivery requirements is beneficial to both customers and members and member organizations and will be effective and efficient when conducted in accordance with Commission standards.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[6] which requires that the rules of the Exchange be designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal complies with the Act by providing standards under which members and member organizations may effectively and efficiently supply required documents to customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and nay person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 28, 1997.

Jonathan G. Katz,

Secretary.

Exhibit A—Information Memo

To: All Members and Member Organizations
Note: Please Route to your Compliance Officer/Chief Operating Officer
Subject: Electronic Delivery of Information to Customers by Members and Member Organizations

This information Memo sets forth the Exchange's policy applicable to electronic delivery of information required to be provided to customers by members and member organizations pursuant to New York Stock Exchange Rules.

[5] *See*, Securities Exchange Act Release No. 37182 at p. 24648, (stating that confirmations of transactions are covered pursuant to Rule 10b–10 of the Act).

[6] 15 USC 78f(b)(5).

On May 9, 1996, the Securities and Exchange Commission ("SEC" or "Commission") issued Release No. 34–37182 to publish its views respecting the use of electronic media by broker-dealers. The Commission stated that broker-dealers may satisfy their delivery obligations under federal securities laws by using electronic media as an alternatives to paper-based media within the framework established in Release No. 33–7233 dated October 6, 1995.

The Exchange will permit members and member organizations that wish to electronically transmit documents that they are required to furnish to customers under NYSE Rules to do so provided they adhere to the standards contained in the SEC Releases. Members and member organizations are urged to review these releases in their entirety to ensure they comply with all electronic delivery requirements. The SEC standards are summarized below:

- Electronic delivery must result in customers receiving information that is substantially equivalent to the information these customers would have received if the required information were delivered in paper from, *i.e.*, the electronically transmitted document must convey all required information. For instance, if a paper document is required to present information in a certain order, then the information delivered electronicaliy should be in substantially the same order.
- A person who chooses to receive a document electronically, must be provided with the information in paper form, upon request.
- Customers who are provided information through electronic delivery from broker-dealers must be able to effectively access the information provided. Also, person to whom information is sent electronically should have an opportunity to retain the information through the selected medium or have ongoing access equivalent to personal retention.
- Broker-dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Broker-dealers may be able to evidence satisfaction of delivery obligations, for example, by:

(1) obtaining the intended recipient's informed consent to delivery through a specified electronic medium, and ensuring that the recipient has appropriate notice and access;

(2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt or by confirmation that the information was accessed, downloaded, or printed; or

(3) disseminating information through certain facsimile methods.

- Prior to delivering personal financial information (*e.g.*, confirmations and account statements) electronically, the broker-dealer must obtain the intended recipient's informed consent. The customer's consent may be either by a manual signature or by electronic means.

The SEC release stated that the above standards are intended to permit broker-dealers to comply with their delivery obligations under the federal securities laws when using electronic media. While compliance with the guidelines is not mandatory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, the Exchange believes adherence to the guidelines should be considered, especially with respect to documents furnished pursuant to agreements or other specific arrangements with customers. Further, the SEC stated that broker-dealers should evaluate the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means.

A list of current Exchange rules which require members and member organizations to furnish specific information to customers for which electronic delivery may be used in accordance with the SEC releases is set forth below. The Exchange believes the list is complete and intends that the policy outlined in this Information Memo covers all communications that firms are required to send to customers pursuant to Exchange rules. Further, the summary of delivery obligations provided in intended for reference only and does not purport to be a statement of all requirements under the rules listed.

- *Rule 382(c) Carrying Agreements)* requires notification to each customer whose account is introduced on a fully disclosed basis of the existence of a clearing agreement, the relationship between the introducing and carrying organization and the allocation of responsibilities between the respective parties.
- *Rule 409 (Statements of Accounts to Customers)* requires delivery of statements of accounts showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See Release No. 34–37182 which covers confirmations of transactions pursuant to SEC Rule 10b–10).
- *Rule 451 (Transmission of Proxy Material)* requires member organizations to transmit proxy materials and annual reports to beneficial owners of stock which is in its possession and control or to others specified in the Rule.
- *Rule 465 (Transmission of Interim Reports and Other Material)* requires transmittal of interim reports of earnings and other material to beneficial owners of stock held by the member organization.
- *Rule 721(c) (Opening of Accounts)* requires that background and financial information on every new options account customer be sent to such customer for verification within fifteen days after the account is approved for options.
- *Rule 721(e)(5) (Uncovered Short Options—Disclosure)* requires that a written description of the risks inherent in writing uncovered short option transactions must be furnished to applicable customers.
- *Rule 725 (Confirmations)* requires member organizations to furnish customers with a written confirmation of each transaction in options contracts.
- *Rule 726(a) (Delivery of Options Disclosure Document)* requires delivery of a current Options Disclosure Document to a customer at or prior to the time the account is approved for trading options. Thereafter, delivery must be made of amendments or revisions to the Options Disclosure Document to every customer approved for trading the kind of option covered by the Disclosure Document.
- *Rule 726(b) (Prospectus)* requires that a current prospectus of The Options Clearing Corporation shall be delivered to each customer who requests one.
- *Rule 730 (Statements of Options Accounts)* requires that monthly statements be sent to options account holders.
- *Rule 781(a) (Allocation of Exercise Assignment Notices)* requires notification to customers of the method used to allocate exercise notices in customer's account.

Questions relating to Exchange matters may be directed to Rudolph J. Schreiber at (212) 656–5226 or Mary Anne Furlong at (212) 656–4823.

Salvatore Pallante,

Senior Vice President.

[FR Doc. 97–11842 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38551; File No. SR–NYSE–97–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Three-Month Extension of Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

April 28, 1997.

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 April 24, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends for three months (until July 24, 1997) the pilot program most recently extended in Securities Exchange Act Release No. 37812 (October 12, 1996), 61 FR 54477 (October 18, 1996) (File No. SR–NYSE–

96–28) (extension of pilot until April 24, 1997.).[1] This is a program to calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for three months a pilot program for calculating and displaying, on execution reports sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. The program does not in any way affect the actual execution orders. The Exchange refers to this calculated dollar savings as the "NYSE PRIME[SM]."[2]

NYSE PRIME is available to all member organizations[3] for intra-day market orders entered via the Exchange's SuperDOT system that are not tick-sensitive and are entered from off the Floor.[4] In calculating the dollar value of price improvement, NYSE PRIME utilizes the Best Pricing Quote ("BPQ") as approved by the Commission in connection with the Exchange's pricing of odd-lot orders.[5]

Data from the operation of the pilot during 1996 show price improvement on 25.3% of the execution reports for eligible post-opening market orders entered on the Exchange. The Exchange believes that the NYSE PRIME enhances the information made available to investors and improves their understanding of the auction market.

The most recent extension of the NYSE PRIME pilot program began on October 24, 1996 and continues until April 24, 1997. The proposed rule change extends the pilot program for an additional three months, to July 24, 1997.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This proposed rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of a price improvement their orders may have received when executed on the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the extension of the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (e)(5) of Rule 19b–4 thereunder.[9] 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. In addition, the Commission recognizes that it is possible for a customer order to receive negative price "improvement," or price disimprovement, instead of price improvement. Price disimprovement occurs when an order is executed at a price that is inferior to the best contra-side bid or ask quote prevailing among the markets and market makers trading the security at the time the order arrived at the market or market maker. The Commission is interested in comment about the appropriateness of an exchange providing price improvement information to members on a trade-by-trade basis without also providing price disimprovement information on the same basis.

Persons making written submissions should file six copies thereof with the

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[1] This program was originally filed as a pilot in Securities Exchange Act Release Nos. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (File No. SR–NYSE–95–35) and 36489 (November 16, 1995), 60 FR 58123 (November 24, 1995) (File No. SR–NYSE–95–37). The initial pilot program subsequently was extended until October 24, 1996 in Securities Exchange Act Release No. 37151 (April 29, 1996), 61 FR 20302 (May 6, 1996) (File No. SR–NYSE–96–10).

[2] NYSE PRIME is a service market of the New York Stock Exchange, Inc.

[3] The Commission notes that member organizations electing to receive NYSE PRIME information are required to enter into an agreement with the Exchange regarding the use of NYSE PRIME information and the NYSE PRIME service mark. Among other things, the agreement provides that in any publication or use of NYSE PRIME information (unless the Exchange otherwise agrees), the member organization must employ the NYSE PRIME service mark.

[4] Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (*e.g.*, switch orders) and orders diverted to sidecar.

[5] *See* Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (File No. SR–NYSE–90–06). The BPQ is the highest bid and lowest offer, respectively disseminated by the Exchange or another market center participating in the Intermarket Trading System ("ITS") at the time the order is received by the Exchange. In order to protect against the inclusion of incorrect or stale quotations in the BPQ, however, the Exchange includes quotations in a stock from other markets only if: (1) the stock is included in ITS in that other market; (2) the quotation size is for more than 100 shares; (3) the bid or offer is not more than one-quarter point away from the NYSE's bid or offer; (4) the quotation conforms to NYSE Rule 62 governing minimum variations; (5) the quotation does not create a locked or crossed market; (6) the market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and, (7) the quotation is "firm" pursuant to Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1, and the market's rules.

[6] The Commission notes that any data regarding NYSE Prime must be submitted to the Commission no later than May 27, 1997 in order to be considered by the Commission with regard to future requests to extend or permanently approve the NYSE Prime pilot program.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(5).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–13 and should be submitted by May 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–11843 Filed 5–6–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

[Docket No. RSPA–97–2426]

National Pipeline Mapping System

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public meeting.

SUMMARY: RSPA invites industry, government agencies, pipeline mapping vendors, and the public to a public meeting on the national pipeline mapping system. This system, when complete, will show the location and selected attributes of the major natural gas and hazardous liquid pipelines, and liquefied natural gas facilities, operating in the United States. The meeting will provide information on the draft national pipeline mapping standards, what data will be requested of the pipeline industry, and the pilot testing that is being conducted.

DATES: The public meeting will be held on May 22, 1997, from 9:00 a.m. to 12:00 p.m. Persons who are unable to attend may submit written comments by July 7, 1997.

ADDRESSES: The public meeting will be held at the Chevron Tower Auditorium, Mezzanine level, 1301 McKinney, Houston Texas.

Address comments to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 7th Street, S.W., Washington, DC 20590–0001, or e-mail to christina.sames@rspa.dot.gov. Comments must identify the docket number stated in the heading of this notice. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, about this document, or for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: The Department of Transportation's Office of Pipeline Safety (OPS) is working with other federal and state agencies and the pipeline industry to create a national pipeline mapping system. This system, when complete, will show the location and selected attributes of the major natural gas and hazardous liquid pipelines, and liquefied natural gas facilities, operating in the United States. This would include information on interstate and intrastate natural gas transmission pipelines, as defined by OPS, and hazardous liquid trunk lines. This would not include service lines, distribution lines, gathering lines, flow lines, or spur lines.

OPS will add additional data layers into the system, including layers on population densities, unusually sensitive areas, natural disaster probability and high consequence areas, hydrography, and transportation networks. OPS will use the system to depict pipelines in relation to the public and the environment, and to work with other government agencies and industry during an incident.

Two Joint Government—Industry Pipeline Mapping Quality Action Teams (MQAT) were formed to work with OPS on creating the digital pipeline location and attribute layer. The Teams are sponsored by OPS, the American Petroleum Institute, the Interstate Natural Gas Association of America, and the American Gas Association. Representatives on the Teams include OPS, the U.S. Geological Survey, the Department of Energy, the Federal Energy Regulatory Commission, the Department of Transportation's Bureau of Transportation Statistics, the states of Texas, Louisiana, California, New York, and Minnesota, and the natural gas and hazardous liquid pipeline industry.

The first mapping Team, MQAT I, was formed to analyze various mapping alternatives and to determine a cost-effective strategy for creating a reasonably accurate depiction (plus or minus 500 feet, for a corridor width of 1000 feet) of transmission pipelines and liquefied natural gas facilities in the U.S. The Team developed a strategic plan with both short and long term strategies for creating a national pipeline mapping system. The recommended long term strategies will require a joint effort between federal and state government agencies, the pipeline industry, and others. The findings of MQAT I are described in, "Strategies for Creating a National Pipeline Mapping System".

MQAT II was created to implement the strategies outlined by the first mapping team. This includes the development of pipeline mapping data standards for both digital and paper submissions, exploring potential options for central clearinghouses or repositories for the pipeline locational data, and investigating the tools and technologies available that will help the pipeline industry migrate from paper to digital location information.

MQAT II has drafted national pipeline mapping data standards that will be used to create the digital pipeline layer in the national pipeline mapping system. These include standards for electronic data submissions, paper map submissions, and metadata (data on the data). The Team has also drafted standards that will be used by the pipeline mapping repository receiving the pipeline information. The Team is currently pilot testing the draft standards and is working to establish relationships with state agencies, industry, and others to exchange data that meets the standards. A copy of the draft standards can be viewed and downloaded from the OPS Internet web site after May 8. The Internet web site is http://ops.dot.gov. The draft standards can also be obtained by calling (202) 366–4561.

Members of the first and second mapping Team will discuss at the public meeting the strategies for creating the national pipeline mapping system, how the strategies are being implemented, and the effect of the mapping initiative on the U.S. pipeline industry. The panel will discuss the draft pipeline mapping data standards, criteria for repositories of the pipeline locational data, pilot tests, and the multi-phase approach that will allow industry and Government to efficiently upgrade information in a manner that works with other business needs.

Issued in Washington, DC on May 2, 1997.
Richard B. Felder,
Associate Administrator for Pipeline Safety.
[FR Doc. 97–11903 Filed 5–6–97; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub–No. 21)[1]]

Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company [oversight]

AGENCY: Surface Transportation Board.
ACTION: Decision No. 1; Notice of Oversight Proceeding, and Request for Comments from Interested Persons on any Effects of the Merger on Competition and Implementation of the Conditions Imposed to Address Competitive Harms.

SUMMARY: The Board is instituting a proceeding to implement the oversight condition imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St.Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP)*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996), and is seeking comments from interested persons on any effects of the merger on competition and the implementation of the conditions imposed to address competitive harms. The Board is also requesting that persons intending to participate in the oversight proceeding notify the Board of their intent to participate. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: Notices of intent to participate in the oversight proceeding are due on May 27, 1997. Comments on any competitive effects of the merger and the implementation of the conditions imposed to address competitive harms are due on August 1, 1997; replies are due on August 20, 1997.

ADDRESSES: An original plus 25 copies[2] of all documents, referring to STB Finance Docket No. 32760 (Sub-No. 21), must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 32760 (Sub-No. 21), Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Parties are requested also, if possible, to submit all pleadings, and any attachments, on a 3.5-inch diskette which is formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In *UP/SP*, Decision No. 44, served August 12, 1996, the Board approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) (collectively, applicants), subject to various conditions. Common control was consummated on September 11, 1996. The Board imposed a 5-year oversight condition to examine whether the conditions imposed effectively addressed the competitive harms they were intended to remedy, and retained jurisdiction to impose additional remedial conditions if, and to the extent, the Board determines that the conditions already imposed have not effectively addressed the competitive harms caused by the merger. The Board now proposes to initiate an oversight proceeding to take comments from interested persons on the effectiveness and implementation of those conditions.[3]

Applicants' Progress Reports

On April 1, 1997, applicants submitted their first quarter 1997 progress report. This report follows applicants' January 2, 1997 progress report and their October 1, 1996 progress report and implementing plan with respect to the conditions imposed on the Board's approval of the *UP/SP* merger. In a preliminary note to the April 1, 1997 progress report, applicants briefly addressed the general status of the merger and implementation of conditions stating that "at the 6-month point following the consummation of UP–SP control, it may be too early to see the full effects of the merger or the conditions."

Applicants note that most merger benefits cannot be realized until labor implementing agreements are in place and UP's Transportation Control System (TCS) and other major systems are installed on SP—processes that will not be completed for some time. Applicants add that many benefits depend on capital investments that will extend over a 4-year period, and the competition-preserving conditions also necessarily take time to implement, although their full effects will actually be felt well before the full benefits of the merger will be realized. Applicants further state that phasing in trackage rights operations, resolving complex systems issues, and sorting out legal disputes as to the scope of various conditions have greatly occupied the parties for the past 6 months and may continue to do so in the near future. Applicants add, nonetheless, that there is already extensive evidence of the benefits of the merger and of the effectiveness of the competition-preserving conditions.

The Burlington Northern and Santa Fe Railway Company (BNSF) Progress Reports

BNSF submitted its first quarter 1997 progress report on April 1, 1997. This is the third quarterly progress report as it follows BNSF's January 3, 1997 progress report and its October 1, 1996 submission of a progress report and operating plan. In the April 1, 1997 report, BNSF summarized the progress it has made since its last report to the Board on its operations and provision of services to shippers using merger-related rights.

It states that total BNSF traffic, as a result of the trackage rights and other rights granted by Decision No. 44, has continued to grow. BNSF indicated that trackage rights volumes in terms of units handled increased by 225% for the first quarter of 1997 compared to the last

[1] This decision embraces the proceeding in Finance Docket No 3270, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.*

[2] In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served. As in the past, documents transmitted by facsimile (FAX) will not be considered formal filings and thus are not acceptable.

[3] Under old 49 U.S.C. 11351 and new 11327, the Interstate Commerce Commission, and now the Board, has continuing jurisdiction to enter supplemental orders and to modify decisions entered in proceedings under old 49 U.S.C. 11343 and new 11323. In addition, applicants volunteered to be subject to a 5-year oversight condition that would authorize the Board to enter such orders as it might deem necessary.

quarter of 1996, and this growth is attributed to the increased customer awareness of the BNSF competitive option to the new UP/SP franchise, as well as its transition, begun in the fourth quarter of 1996 but accelerating in the first quarter of 1997, from haulage to trackage rights operations as volumes in key lanes continue to grow. BNSF states that it expects to see these volumes continue to grow through the second quarter of 1997 and beyond, and that, in a number of its UP/SP lanes, it has seen volumes grow to permit daily train service in each direction, which is an important milestone to providing effective competitive rail service.

BNSF notes that capital improvements have already been made to support these new operations and other improvements are planned as part of the 1997 capital budget, and that BNSF has continued its significant efforts to inform existing and potential customers of the available BNSF services, including marketing efforts to attract new customers over its new routes and offers of competitive service to or from customers at two-to-one points. BNSF further adds that, in spite of its continued vigorous efforts to implement operations and market services to shippers to which BNSF has gained access pursuant to Decision No. 44, there are still challenges to the prompt accomplishment of the Board's intention to preserve vigorous competition.

Oversight Proceeding

The oversight effort is intended to allow us to determine whether any problems have developed, with respect to implementation of the merger conditions addressing competitive harms, that require us to take further action. Our oversight effort will not exclude, related to those conditions, any aspect of the transaction or the existence of any type of anticompetitive effect. In the progress report filed on April 1, 1997, applicants state that they propose to submit with their next quarterly progress report on July 1, 1997, a more in-depth analysis of the effects of the merger and condition implementation. Therefore, we fully expect that the information presented by applicants in their July 1 progress report will be more extensive, including specific details of how each condition has been met, and we will hold them to that commitment. Regarding BNSF's July 1 progress report, we expect that BNSF will provide more detailed information regarding its efforts to be an effective competitor to the applicants. Parties may submit comments on any effects of the merger on competition and implementation of the conditions imposed to address competitive harms by August 1, 1997. Replies are due on August 20, 1997. We will review the comments and replies, and will then determine what further action is appropriate.

Protective Order

Parties may submit filings, as appropriate, under seal marked Confidential or Highly Confidential pursuant to the Protective Order granted in UP/SP, Decision No. 2 (ICC served Sept. 1, 1995). Parties will be required to file redacted versions to be placed in the public docket.

Service List

Any person who intends to participate actively in the oversight proceeding as a "party of record" (POR) must notify us of this intent by May 27, 1997. In order to be designated a POR, a person must satisfy the filing requirements discussed above in the **ADDRESSES** section. We will then compile and issue a final service list for this oversight proceeding as soon as practicable. Copies of decisions, orders, and notices will be served only on those persons who are designated as POR, MOC (Members of the United States Congress), and GOV (Governors), on the official service list. Copies of filings must be served on all persons who are designated as POR. We note that Members of the United States Congress and Governors, who are designated MOC and GOV, are not parties of record and they need not be served with copies of filings; however, those who are designated as a POR must be served with copies of filings. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289–4357.

A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in Finance Docket No. 32760. This decision will serve as notice that persons who were parties of record in Finance Docket No. 32760 will not automatically be placed on the service list as parties of record for this oversight proceeding unless they notify us of their intent to participate further. Applicants and BNSF will be required to serve their July 1, 1997 Progress Report on all PORs on the new service list, and any other interested person who submits a written request to applicants and/or BNSF.

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

Decided: May 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen. Chairman Morgan commented with a separate expression.

Vernon A. Williams,

Secretary.

[FR Doc. 97–11876 Filed 5–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–36]

Revocation of Sanson Marine, Inc.'s; Customs Gauger Approval

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

ACTION: Notice of Revocation of Customs Gauger Approval.

SUMMARY: Sanson Marine, Inc., of Roselle, New Jersey, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Sanson Marine, Inc. has been revoked with prejudice.

EFFECTIVE DATE: April 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 at (202) 927–1060.

Dated: April 22, 1997.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 97–11781 Filed 5–6–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–37]

Revocation of Gauger Approval and Revocation of Laboratory Accreditations of ComSource American, Inc.

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

ACTION: Notice of Revocation of Approval and Accreditations of a Customs Commercial Gauger and Laboratory.

SUMMARY: ComSource American, Inc., of Pasadena, Texas, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has sold its assets and will no longer conduct business under the name ComSource American. Accordingly, pursuant to Section 151.13(f) of the Customs Regulations, we hereby give notice that the Customs commercial gauger approval and laboratory accreditations of ComSource American, Inc., have been revoked without prejudice.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 at (202) 927–1060.

Dated: May 1, 1997.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 97–11782 Filed 5–6–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–11; OTS No. 00906]

First Robinson Savings and Loan, F.A., Robinson, Illinois; Approval of Conversion Application

Notice is hereby given that on April 21, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Robinson Savings and Loan, F.A., Robinson, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: May 1, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–11777 Filed 5–6–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–12; OTS No. 01415]

FirstBank Northwest, Lewiston, ID; Approval of Conversion Application

Notice is hereby given that on April 30, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of FirstBank Northwest, Lewiston, Idaho, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: May 1, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–11776 Filed 5–6–97; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at The Hotel Sofitel Miami, 5800 Blue Lagoon Drive, Miami, Florida on Wednesday, May 7, 1997, at 10:30 a.m. The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting—Wednesday, May 7, 1997

Agenda

Part One—Closed to the Public

I. Technical Operations Update
A. Status Report of UHF
B. Capital Improvement Line Item
1. Aerostat
2. Marathon
3. Computers: Digital Internet Capabilities
II. Approval of Minutes

Part Two—Open to the Public

I. Appointments/Commendations
II. Radio Marti Update
A. Funding Needs
B. Relocation
C. Programming
D. Grantee Status
III. T.V. Marti Update
IV. Office of Program Evaluation Update
V. Congressional Update
VI. Office of Inspector General Report
VII. Arbitration Report
VIII. Old Business
IX. New Business.

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (305) 994–1784.

Determination To Close a Portion of the Advisory Board Meeting of May 7, 1997

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 10:30 a.m. to 11:15 a.m. portion of this meeting should be closed to the public.

The Advisory Board has requested that part one of the May 7, 1997, meeting be closed to the public. Part one will involve information the premature disclosure of which would likely frustrate inplementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions, frequencies, alternate channels and new technologies for Radio Marti.

Dated: April 30, 1997.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 97–11957 Filed 5–2–97; 4:49 pam]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 62, No. 88
Wednesday, May 7, 1997

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 AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Standard for Acceptance Tests and Measurements of Telecommunications Plant

Correction

In rule document 97–11316, beginning on page 23958, in the issue of Friday, May 2, 1997, make the following correction:

On page 23992, Figure 16 (End-to-End Fiber Optic Attenuation Measurement Showing Measurement in One Direction Only) should be removed, and the following equation inserted:

$$\text{Actual Splice Loss (dB)} = \frac{\text{OTDR Reading From A to B} + \text{OTDR Reading From B to A}}{2}$$

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Work Opportunity Tax Credit; Lower Living Standard Income Level

Correction

In notice document 97–10699, beginning on page 20205 in the issue of Friday, April 25, 1997, make the following corrections:

1. On page 20205, in the third column, in the seventh line, "Inder" should read "Under".

2. On page 20206, in the first column, in the third paragraph, in the fourth line, "CLI-U" should read "CPI-U".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISION

[Docket 70-7001]

Notice of Amendment to Certificate of Compliance GDP-1 for U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

Correction

In notice document 97–10326 beginning on page 19631 in the issue of Tuesday, April 22, 1997, make the following correction:

On page 19632, in the second column, in the Effective date section, "June 23, 1997" should read "60 days after issuance of amendment."

BILLING CODE 1505-01-D

federal register

Wednesday
May 7, 1997

Part II

Federal Trade Commission

Request for Public Comment on Proposed Guides for the Use of U.S. Origin Claims; Notice

FEDERAL TRADE COMMISSION

Request for Public Comment on Proposed Guides for the use of U.S. Origin Claims

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed Guides for the Use of U.S. Origin Claims.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has been conducting a comprehensive review of "Made in USA" and other U.S. origin claims in product advertising and labeling. Historically, the Commission has held that a product must be *wholly domestic* to substantiate an unqualified "Made in USA" claim. As part of its review, the Commission, by **Federal Register** notice dated October 18, 1995, requested public comment on various issues related to the evaluation of such claims and, on March 26 and 27, 1996, held a public workshop and invited representatives of industry, consumer groups, unions, government agencies and others to attend and exchange views. On April 26, 1996, the Commission published a **Federal Register** notice extending the deadline for post-workshop public comments until June 30, 1996.

The Commission now announces proposed Guides for the Use of U.S. Origin Claims and seeks public comment on these guides. Under these proposed guides, a marketer making an unqualified claim of U.S. origin must, at the time it makes the claim, possess and rely upon a reasonable basis that the product is *substantially all* made in the United States. To assist manufacturers in complying with this standard, the proposed guides also set out two alternative "safe harbors" under which an unqualified U.S. origin claim would not be considered deceptive. The first safe harbor encompasses products whose U.S. manufacturing costs constitute 75% of total manufacturing costs and were last substantially transformed in the United States. The second safe harbor applies to products that have undergone two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation took place in the United States, and the last substantial transformation of each of its significant inputs took place in the United States.

The proposed guides also address various qualified claims, claims regarding specific processes and parts, multiple-item sets, and changes in costs and sourcing. They also authorize specific origin claims for certain products that are both sold domestically and exported. Throughout, the proposed guides address the interaction of FTC deception law with U.S. Customs Service requirements.

DATES: Written comment will be accepted until August 11, 1997.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. (If possible, documents in WordPerfect 6.1 or Word 6.0, or earlier generations of these word processing programs, are preferred. Files from operating systems other than DOS or Windows should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. *Submissions should be captioned:* "Made in USA Policy Comment," FTC File No. P894219.

FOR FURTHER INFORMATION CONTACT: Beth M. Grossman, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, FTC, Washington, DC 20580, telephone 202–326–3019, or Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, DC 20580, telephone 202–326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has been conducting a comprehensive review of its standards for evaluating "Made in USA" claims in advertising and labeling. The Commission now proposes to issue Guides for the Use of U.S. Origin Claims, set out at the end of this notice, and seeks comment on these proposed guides. The comment period will remain open until August 11, 1997.

The Commission regulates claims of U.S. origin, such as "Made in USA," pursuant to its statutory authority under Section 5 of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices." Cases brought by the Commission beginning over 50 years ago established the principle that it was deceptive for a marketer to promote a product with an unqualified "Made in USA" claim unless that product was wholly of domestic origin.[1] Recently, this standard had been rearticulated to require that a product advertised as "Made in USA" be "all or virtually all" made in the United States, *i.e.*, that all or virtually all of the parts are made in the U.S. and all or virtually all of the labor is performed in the U.S.[2] In both cases, however, the import has been the same: unqualified claims of domestic origin were deemed to imply to consumers that the product for which the claims were made was in all but *de minimis* amounts made in the United States.

In a July 11, 1995 press release, the Commission announced that it would undertake a comprehensive review of U.S. origin claims and examine whether the Commission's traditional standard for evaluating such claims remained consistent with consumer perceptions and continued to be appropriate in today's global economy. On October 18, 1995, the Commission published a notice in the **Federal Register** formally soliciting public comment for 90 days on various issues related to this review, including the costs and benefits of continuing to use the "all or virtually all" standard, and announcing that Commission staff would conduct a public workshop on this topic. 60 FR 53922. A follow-up notice published on December 19, 1995, announced that the public workshop would be held on March 26 and 27, 1996, and indicated that the record would be held open for post-workshop public comment until April 30, 1996. 60 FR 65327. In response to these notices, the Commission received approximately 294 written comments. Contemporaneous with the solicitation of public comment, Commission staff also commissioned a two-part study to examine consumer understandings of U.S. origin claims. The results of this study are discussed below.

As noted, Commission staff conducted a two-day public workshop on issues related to U.S. origin claims. Thirty-three individuals, representing corporations and trade associations from a variety of industries; labor unions; federal and state government agencies;

[1] *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

[2] This language was first used in the cases of *Hyde Athletic Industries*, File No. 922–3236 (consent agreement accepted subject to public comment Sept. 20, 1994) and *New Balance Athletic Shoes, Inc.*, Docket No. 9268 (complaint issued Sept. 20, 1994). In light of the decision to review the standard for U.S. origin claims, the Commission later modified the complaints in these cases to eliminate the allegations based on the "all or virtually all" standard. Consent agreements based on these revised complaints were issued on December 2, 1996 (*New Balance*) and December 4, 1996 (*Hyde*).

and consumer groups, participated in the workshop, and a number of other interested individuals attended the workshop as observers. At the workshop, which was moderated by a neutral, third-party facilitator, results of the Commission's consumer perception study as well as consumer studies conducted by several other participants were presented, and there was an extended round table discussion of the costs and benefits of the various alternative standards under consideration for the evaluation of U.S. origin claims. Following the workshop, the Commission, in a notice published on April 26, 1996, extended the period for clarifying or rebuttal comments until June 30, 1996, and set forth additional questions for comment. 61 FR 18600. Approximately 49 additional comments were received in response to the April 26 notice, including a proposed set of guidelines submitted by the "Ad Hoc Group," a coalition of industry groups that had participated in the public workshop.

After reviewing the public comments, the consumer perception evidence, and the workshop proceedings, the Commission now proposes to adopt Guides for the Use of U.S. Origin Claims, which appear at the end of this notice in Section IX, and seeks comment on the proposed guides.

Section II of this notice discusses the relevant country-of-origin marking rules applied by the U.S. Customs Service and how these rules relate to the FTC's regulation of U.S. origin claims. Section III summarizes the comments received by the Commission. Section IV contains a discussion of the factors considered by the Commission in its formulation of a policy on U.S. origin claims, including evidence of consumer perception; consistency with other statutory and regulatory requirements; and practical issues of implementation. Section V provides an overview of the proposed guides, and Section VI provides a section-by-section analysis of the proposed guides. Section VII addresses the Commission's policy with respect to goods without any country-of-origin marking. Section VIII requests public comment on the proposed guides. The proposed guides themselves are set out in Section IX.

Information related to the Commission's review of U.S. origin claims, including the public comments received, a transcript of the workshop proceedings, and consumer perception studies conducted by the Commission and other interested parties, are available in the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, DC 20580. In addition, the public comments, the workshop transcript, and previous **Federal Register** notices related to this review are available on the Commission's Home Page on the World Wide Web, which can be reached through the internet at http://www.ftc.gov.

II. Background: Country-of-Origin Marking Requirements for Imported Goods

A. Relationship Between the Requirements of the U.S. Customs Service and the Policies of the FTC

In the course of the Commission's review, there has been much discussion of the relationship between the policies of the U.S. Customs Service ("Customs" or "the Customs Service") and those of the FTC with respect to country-of-origin marking. As a general matter, the Customs Service regulates mandatory country-of-origin markings on imported products, while the FTC's policies govern voluntary U.S. origin claims, whether in advertising or labeling, about domestic products.[3]

Specifically, Section 304 of the Tariff Act of 1930, administered by the Secretary of the Treasury and the Customs Service, requires that all products of foreign origin imported into the United States be marked with the name of a foreign country of origin. Where an imported product incorporates materials and/or processing from more than one country, Customs considers the country of origin to be the last country in which a "substantial transformation" took place. A substantial transformation is a manufacturing process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing. Country-of-origin determinations using the substantial transformation test are made on a case-by-case basis through administrative determinations by the Customs Service.[4]

Where Customs determines that a good is not of foreign origin (*i.e.*, the good undergoes its last substantial transformation in the United States), there is generally no requirement that it be marked with any country of origin. For most goods, neither the Customs Service nor the FTC requires that domestic goods be labeled with "Made in USA" or any other indication of U.S. origin.[5] Where a marketer chooses voluntarily, however, to make a U.S. origin claim in an advertisement or on a label, the marketer must conform with the FTC Act's general prohibition on "unfair or deceptive acts and practices." Thus, a "Made in USA" claim, like any other advertising claim, must be truthful and substantiated.

B. Other Relevant Information on Country-of-Origin Determinations

In addition to the Tariff Act, two international agreements provide a further backdrop to the discussion of country-of-origin labeling.

North American Free Trade Agreement (NAFTA)

Goods imported from NAFTA countries are not subject to the Customs Service's case-by-case determinations of substantial transformation. Instead, marking requirements for such goods are governed by a change in tariff classification or "tariff shift" approach. This approach relies on an enumerated list of changes in tariff classification. In determining the country of origin for NAFTA marking purposes, one looks to whether a foreign article has changed sufficiently as the result of processing in another country that it would fit within a different tariff classification than it would have prior to that processing. Where the ultimate article undergoes one of the enumerated shifts in tariff classification as a result of processing in a particular country, the country of origin is the country where that processing took place.[6]

Although the NAFTA tariff classification scheme was intended by the Customs Service to be merely a codification of its traditional substantial transformation test, there continues to be controversy over perceived differences between the tariff shift standard and case-by-case rulings under the traditional standard. A decision on a proposal by the Customs Service to

[3] The Commission also has had policies relating to unmarked goods and disclosures to supplement those required by Customs. These policies are addressed in Section VII.

[4] For goods from NAFTA countries, determinations are codified in "tariff shift" regulations, as noted below.

[5] For a limited number of goods, such as textile, wool, and fur products, there are, however, statutory requirements that they disclose the U.S. processing or manufacturing that occurred. *See, e.g.*, Textile Fiber Products Identification Act, 15 U.S.C. 70(b).

[6] For example, assume that a product is partially manufactured in a non-NAFTA country, then sent to Canada for its remaining processing, and the finished product is exported to the United States. Upon import into the United States, the product would be appropriately marked "Made in Canada" if the tariff classification assigned to the finished product when it is exported from Canada to the United States is different from the tariff classification that would be assigned to the product in the state in which it was brought into Canada, and that difference in tariff classification is on a specified list of tariff shifts enumerated in the NAFTA marking rules.

extend the NAFTA marking rules to all imported goods was recently deferred to an indefinite later date.[7]

World Trade Organization (WTO)

Pursuant to the Uruguay Round Agreements, the WTO is currently engaged in an effort to harmonize international rules of origin. The goal of this effort is for all participating countries to use the same rules for determining country of origin for all non-preferential purposes, including country-of-origin marking. The WTO Agreement on Rules of Origin (ARO) adopts substantial transformation as the basic standard for determining country of origin, and expresses a preference for a tariff shift approach as the method of determining whether a substantial transformation has taken place. The WTO's initiative does not generally extend to determinations of domestic origin.[8]

The WTO's harmonization program is scheduled to be completed three years from its commencement in March 1995. The U.S. Government, through the office of the United States Trade Representative and other agencies, has participated actively in the WTO's effort. In order to take effect in the United States, however, any rules published by the WTO would have to be legislatively enacted by Congress and current Customs rules harmonized with them.[9]

III. Summary of Comments

A. General Information

The Commission received a total of 342 written public comments in response to its announcement on July 11, 1995 that it would conduct a comprehensive review of consumers' perceptions of "Made in USA" advertising claims and conduct a public workshop, and to its **Federal Register** notices that specifically solicited public comments.[10] The commenters included approximately 182 individual consumers, 55 manufacturers and other corporations, 37 trade associations, 7 labor unions and union-affiliated organizations, 26 members of Congress,[11] 26 state and Federal Government agencies (including a coalition of 22 state attorneys general), 2 consumer groups, 2 nonprofit organizations, and 5 others.

The written comments, as well as the discussion at the public workshop, focused primarily on three alternative standards for evaluating U.S. origin claims. One group of commenters favored retaining the Commission's current standard, under which a product promoted as "Made in USA" would have to be "all or virtually all" made in the United States. A second set of commenters favored a percentage content standard. Under this standard, a product could be promoted as "Made in USA" if a set percentage (generally 50%) of the cost of manufacturing that product was attributable to U.S. production, and the product underwent final assembly in the U.S. A third group of commenters favored some version of the substantial transformation test applied by the U.S. Customs Service, such that any product "substantially transformed" in the United States could be labeled "Made in USA."

The discussion below summarizes the commenters positions on the costs and benefits of each of the primary standards. It also briefly summarizes comments proposing other standards, as well as comments supporting and criticizing the guidelines proposed by the Ad Hoc Group.[12]

B. "All or Virtually All" Standard

In its October 18, 1995 **Federal Register** notice, the Commission sought comment on the costs and benefits of its current "all or virtually all" standard. In response, most of the comments received by the Commission discussed this standard, either to support it or to criticize it.

1. Comments Supporting the "All or Virtually All" Standard

Approximately 147 individual consumers and 73 other commenters supported the current "all or virtually all" standard.[13] These include a coalition of 22 state Attorneys General,[14] 13 members of Congress,[15] 6

[7] In addition to its marking rules, NAFTA also specifies separate rules of origin that are used to determine whether a product qualifies for preferential tariff treatment under NAFTA. These rules of origin are based on a different set of tariff shifts than are the marking rules and, in many cases, also incorporate a value-added requirement. For purposes of this notice, these rules of origin will be referred to as "NAFTA Preference Rules" to distinguish them from the "NAFTA Marking Rules" described above.

[8] The ARO does provide, however, that standards for determining the origin of domestic goods may be no longer than for determining the origin of imported goods. In doing so, it implicitly recognizes that standards for determining domestic origin may be *higher* than those for determining foreign origin. ARO, Annex 1A, Article 3(c).

[9] For further information on U.S. and international country-of-origin marking, *see* U.S. International Trade Commission, *Country-of-Origin Marking: Review of Laws, Regulations and Practices*, (Publication 2975, July 1996) a report issued by the U.S. International Trade Commission (ITC) in response to a request from the House of Representatives Committee on Ways and Means ("ITC Report").

[10] The comments have been filed on the Commission's public record as Document Nos. B18354900001, B18354900002, etc. The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, *e.g.*, Stanley, #59, at 5. A complete list of commenters is appended to this notice. Comments #1 through #200 and #332 through #343 were submitted following publication of the Commission's October 18, 1995, and April 26, 1996, **Federal Register** notices soliciting public comment. Comments #201 through #281 and #283 through #331 (there is no comment #282) were submitted in response to media coverage prior to the October 18, 1995 notice, but have been added to the public record of this matter because they are relevant to the Commission's consideration). The transcript of the public workshop on March 26 and 27, 1996 has been placed on the Commission's public record as Document No. B199403. References to comments made during the workshop are cited by the name of the speaker, the speaker's affiliation, and the relevant page(s) of the transcript, *e.g.*, Sarah Vanderwicken for IBT, Tr. at 80–81.

Twenty-six commenters filed two comments each, in response to the two notices soliciting public comment, and several comments were signed by more than one commenter. Nonetheless, the total number of *commenters* is, coincidentally, the same as the total number of *comments*: 342.

[11] In addition, five other members of Congress forwarded comments from their constituents.

[12] Because the Ad Hoc Group's proposed guidelines (comment #183) were submitted to the Commission on the last day of the comment period, they were not generally available for comment and some interested parties may not have had the opportunity to review them before submitting their own comments.

[13] Although not expressly identifying themselves as supporters of the "all or virtually all" standard, at least two commenters urged the Commission to adopt a percentage-based standard that would require that products be made with at least 90% domestic parts and labor in order to be called "Made in USA." Bill Haley & Associates, Inc ("Haley"), #128; G.G. Bean, Inc ("Bean"), #36 (submitted by the American Pet Products Manufacturers Association, Inc., of which G.G. Bean is a member; the trade association itself took no position on the appropriate standard for Made in USA claims). For purposes of this summary, the Commission has treated these comments as supporting an "all or virtually all" standard.

[14] The comment originally submitted to the Commission on behalf of the Attorneys General was signed by the Attorneys General of the states of California, Connecticut, Florida, Hawaii, Iowa, Kansas, Maryland, Michigan, Missouri, Nevada, New Hampshire, New York, Ohio, Rhode Island, Washington, and West Virginia ("AGs"), #43. Following the submission of comment #43, the Attorneys General of the states of Illinois, #185, New Jersey, #138, North Carolina, #114, Pennsylvania, #134, Tennessee, #122, and Wisconsin, #151, joined in the coalition comment. A follow-up statement by the Attorney General of Connecticut on behalf of the coalition was submitted at the opening of the public workshop, and is included in the public record as comment #343.

[15] U.S. Rep. John D. Dingell ("Dingell"), #153; U.S. Rep. Peter Deutsch ("Deutsch"), #340; U.S. Rep. Dale E. Kildee ("Kildee"), #333; U.S. Rep. Jerry Kleczka ("Kleczka"), #337; U.S. Sen. Carl Levin ("Levin"), #332; U.S. Rep. Donald A. Manzullo ("Manzullo"), #334; U.S. Rep. Carlos J. Moorhead ("Moorhead"), #339; U.S. Sens. Carol Moseley-Braun and Paul Simon ("Moseley-Braun/Simon"), #341; U.S. Rep. Glenn Poshard ("Poshard"), #163; U.S. Rep. James H. Quillen ("Quillen"), #168; U.S. Rep. Charles H. Taylor ("Taylor"), #169; U.S. Rep. James A. Traficant, Jr. ("Traficant"), #144.

trade associations,[16] 7 labor unions or union-affiliated organizations,[17] 23 manufacturers and other corporations,[18] a consumer group,[19] and a local political club.[20]

The large majority of consumer comments supported the current standard or some other, similarly high standard. Typically, individual consumer commenters stated that "Made in USA" should mean "Made in USA." Many also stressed that they wish to buy American products, and expressed concern that if the standard is lowered, they may be deceived into buying a product that was not really made in the USA. The following comments capture the flavor of many of the individual consumer comments:

> Please do not change the definition of "Made in USA." "Made in USA" means precisely that—manufactured on American soil, by American workers, with American-made materials—100%[21]

> How will we know what country made part or all of any item, or what was completely made here, including raw materials? Can anything be done to stop this action [changing the standard] on the part of the FTC?[22]

> American consumers who wish to purchase goods which are domestically made will clearly be hampered from doing so if the labels on those goods are ambiguous and may not mean what they say. Please do not allow this to happen.[23]

Other supporters of the "all or virtually all" standard warned that altering the current standard will lead to consumer deception, or at least consumer confusion, because the current standard is most consistent with consumer perception. Citizen Action, for example, stated:

> Should the FTC [change the "all or virtually all" standard], it is clear to us that a situation would exist in which the 'Made in USA' label means one thing in regulation and something very different in the minds of consumers. The confusion that would be created would directly contradict the primary purpose of utilizing labels to provide an effective consumer information tool.[24]

These commenters argued that the consumer perception evidence before the Commission demonstrates that many American consumers interpret a "Made in USA" label consistent with the "all or virtually all standard." Consumers, according to these commenters, believe that a product that is labeled "Made in USA" is entirely made in the USA, not merely assembled in the U.S. of foreign parts.[25]

Many commenters favoring the current standard further asserted that consumer perception surveys demonstrate that "Made in USA" is a material claim to the vast majority of American consumers. For example, the American Hand Tool stated that all of the surveys presented at the public workshop indicate that consumers consider a "Made in USA" label to be important when making purchasing decisions.[26] Accordingly, these commenters concluded consumers want to know if a product is made entirely, or only partially, in the United States and choose to purchase products fully made in the United States for quality reasons, to ensure that the product was not made by exploited workers, and to support the U.S. economy and U.S. workers.[27]

Several advocates of the "all or virtually all" standard acknowledged that today's marketplace is a more global one, but argued that this has not caused consumers to change their perception that products advertised or labeled "Made in USA" contain all or virtually all domestic materials and labor. Indeed, some of the supporters of the current standard maintained that the fact that consumers may be aware of increased globalization of production makes unqualified "Made in USA" claims more, not less, significant. The coalition of Attorneys General explained it thusly:

> As the perception grows that America is losing jobs due to a shrinking manufacturing base, and the availability of truly U.S.A. products declines, the fact that a product is Made in the USA becomes increasingly valuable to consumers who wish to buy American. In such a climate, we believe it becomes more, not less, important to ensure that manufacturers are not using deceptive claims * * *.[28]

A number of supporters of the "all or virtually all" standard disputed critics' assertions that it is nearly impossible to comply with the standard. They emphasized that some companies can and do produce products that are "all or virtually" made in the USA.[29] These commenters argued that lowering the standard would penalize producers who are able to label their products as "Made in USA" under the current standard, and would reward companies who purchase foreign materials or use foreign labor. Diamond Chain Co., a U.S. manufacturer of precision roller chains, for example, wrote:

> Being able to make an unqualified Made in USA claim for a product with as little as 50%

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[16] Alabama Textile Manufacturers ("ATM"), #12; American Hand Tool Coalition ("American Hand Tool"), #91, #186; American Textile Manufacturing Institute ("ATMI"), #92, #171; Crafted With Pride in USA Council, Inc. ("Crafted With Pride"), #35. #176; National Knitwear & Sportswear Association ("NKSA"), #53; Tile Council of America, Inc. ("TCA"), #161.

[17] Jefferson, Lewis & St. Lawrence Counties Central Trade & Labor Council, AFL–CIO ("AFL–CIO/Jefferson"), #146; Union Label & Service Trades Dept., AFL–CIO ("AFL–CIO/ULSTD"), #48; Engineers Political Action Committee ("EPAC"), #335; International Brotherhood of Teamsters ("IBT"), #107; International Leather Goods, Plastics, Novelty & Service Workers' Union, AFL–CIO/CLC ("ILGPNSWU"), #80; United Auto Workers ("UAW"), #93, #174; Retired Workers Council, Region 1–A, UAW (Buy American Union Label Committee) ("UAW/RWC"), #33.

[18] Bean, #36; Capital Mercury Shirt Corp. ("Capital"), #9; Steel Technologies ("Steel Technologies"), #152; Centerville Lumber Co. (attached to submission of U.S. Rep. Ed Bryant) ("Centerville"), #145; Deere & Co. ("Deere"), #57; Diamond Chain Co. ("Diamond Chain"), #55; Dynacraft Industries ("Dynacraft"), #45, #173; Estwing Manufacturing. Co. ("Estwing"), #179; Hager Hinge ("Hagar"), #160; Haley, #128; Impress Industries ("Impress"), #308; Laclede Steel Co. ("Laclede"), #143; Porterco, Inc. and Megasack Corp. ("Porterco/Megasack"), #132; Precision—Kidd Steel Co.; (Precision-Kidd"), #142; Summitville Tiles, Inc. ("Summitville"), #162; Tileworks ("Tileworks"), #156; Tompkins Brothers Co., Inc ("Tompkins"), #157; Vaughan & Bushnell Manufacturing ("Vaughan & Bushnell"), #97, #191; Weldbend Corp. ("Weldbend"), #190; Werner Co. ("Werner"), #129; Western Forge Corp. (Western Forge"), #49; Wright Tool ("Wright"), #40.

[19] Citizen Action ("Citizen Action"), #181

[20] Jefferson Democratic Club of Flushing, NY ("Jefferson Democratic Club"), #61.

[21] Virginia Hoover ("Hoover"), #5, at 1.

[22] Helen Menahen (attached to submission of U.S. Sen. Dianne Feinstein) ("Menahen"), #200.

[23] Gloria Gonzalez ("Gonzalez"), #113.

[24] Citizen Action, #181, at 2.

[25] *See, e.g., Deere*, #57, at 2 (citing FTC 1991 consumer perception study showing that 77% of buying public believed that "Made in USA" claims mean "all or nearly all" of a finished product was manufactured in U.S.); AGS, #43 at 2–4 (citing 1991 FTC consumer perception study), #343 Dynacraft, #45, at 1–2 (citing 1991 FTC consumer perception study), #173, at 2–3, 5, 7; American Hand Tool, #91, at 6; #186, at 2, 7; Diamond Chain, #55, at 1; NKSA, #53, at 2; Western Forge, #49, at 1; Vaughan & Bushnell, #97, at 3; Laclede, #143, at 11; Dingell, #153, at 2.

[26] American Hand Tool, #186, at 6, n.2.

[27] *See, e.g.*, AGs, #43, at 4 (1991 FTC consumer perception study showed respondents preferred U.S. products because buying USA supports economy and keeps Americans working); Vaughan & Bushnell, #97, at 2 (consumers look for make in USA label to assure themselves of a high-quality tool and to express support for domestic manufactering); Wright, #40, at 1 (enlarging Made in USA definition would no longer strictly convey U.S. workmanship); Crafted With Pride, #35, at 2 (consistent and corroborative research confirms consumers' positive perception of the quality of Made in USA apparel and home textiles; UAW/RWC, 33, at 1–2 (Would be sacrilege to allow any part of any product to be sanctioned by Made in USA label if made in foreign nations by exploited workers under deplorable conditions).

[28] AGs, #43, at 2. *See also* International Brotherhood of Teamsters ("[i]n the face of globalization, consumers can appreciate even more the determination of a company to retain American jobs and use American materials"); IBT, #107, at 4; Poshard, #163, at 1.

[29] *See, e.g. Diamond Chain*, #55; Vaughan & Bushnell, #97, at 2 (manufacturers hand tools that meet standard); Tileworks, $156, at 1 (only 5% of its raw materials are procured abroad); Welbend, #190 (makes fittings in U.S. without depending on foreign materials or labor); American Hand Tool, #91, at 5 (Coalition members have made and continue to make hand tools that meet current standard), #186, at 2–3; Dingell, #153, at 2–3; Dingell, at 2; UAW, #174, at 1.

domestic content benefits the manufacturer of that product by allowing customers to believe that manufacturer contributes much greater support to the domestic economy than is actually the case. The manufacturer of a product with 95% domestic content is penalized because he or she has incurred the cost of finding and developing domestic sources of supply that the manufacturer of the lower domestic-content product has not.[30]

Many supporters of the current standard asserted that the standard furthers investment in U.S. manufacturing and creates secure jobs in this country. Accordingly, lowering the standard would lessen the incentive that companies have to use U.S. labor and U.S. product components. American jobs, these commenters concluded, would be jeopardized as companies rely more and more on less expensive foreign sources. The United Auto Workers noted:

> The increasing globalization of production has led to the incorporation of foreign materials, parts and components into most of the products made by UAW members. In too many cases, U.S. firms use foreign inputs solely to increase their profits, which comes at the expense of American jobs. When foreign procurement comes from the subsidiaries of the U.S. firm, the adverse impact on American jobs is a direct substitution of foreign labor for domestic.[31]

Other commenters contended that the "all or virtually all" standard should be maintained because it gives clear guidance to those wishing to make a "Made in USA" claim. The coalition of Attorneys General, for example, commented:

> Due to the increasing relevance and popularity of *Made in the U.S.A.* claims, consumers, manufacturers and law enforcement agencies need clear and authoritative guidance regarding their meaning. . . .Accordingly, we urge the FTC to promulgate a regulation, or an enforcement guideline, incorporating the FTC's current standard that requires products unqualifiedly represented to be *Made in the U.S.A.* to be assembled all, or virtually all, within the U.S.A. using all, or virtually all, U.S.A. component parts.[32]

Finally, several supporters of the "all or virtually all" standard contended that it is not necessary to change the standard in order to permit sellers of products made with some foreign parts or labor to inform consumers of their products' U.S. content. These commenters argued that sellers are free to make qualified claims for such products. As U.S. Representative Traficant stated, the "FTC and Congress have not precluded any manufacturer with such foreign content or involvement from choosing to advertise or label their products as Made in USA so long as they qualify that claim (*e.g.*, 'Made in USA of foreign and domestic components')."[33] Deere & Co. further stated that if such alternatives are not acceptable to these companies, "that is reflective of the importance of the claims based on consumer expectations."[34]

In a similar vein, Diamond Chain Co. maintained that, although it is more difficult and expensive to make qualified claims for products that are not wholly domestic, it is also "a substantial sales benefit to be able to make unqualified Made in USA claims," so that the issue is reduced to a "legitimate cost vs. benefit business decision."[35] Thus, Diamond Chain Co. asserted that, if a producer wants the advantage of the lower cost of foreign-produced materials and components, the company should balance that benefit against the cost of not being able to make an unqualified "Made in USA" claim. Conversely, if a producer wants to take advantage of making an unqualified "Made in USA" claim, the company should balance that benefit against the cost of finding and developing the domestic source.[36]

2. Comments Opposing the "All or Virtually All" Standard

Many of the comments received by the Commission criticized the "all or virtually all" standard as being too strict and urged the Commission to lower it. In addition to those commenters who argued in favor of the other standards discussed below, at least 15 commenters who did not indicate a preference for a specific alternative standard nonetheless expressed their dissatisfaction with the current standard.[37]

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[30] Diamond Chain, #55, at 2. *See also* Michael S. Hinshaw and Ernest R. Rollins (attached to submission of U.S. Sen. John D. Rockefeller IV); ("Hinshaw), #66 (franchisees of U.S. company that sells products truly made in U.S. will be at a great disadvantage selling against competitors who will be able to claim that imported products they sell are made in the United States); Bean, #36 (use of Made in USA label where product is not 100% manufactured in U.S. increases profits of companies using inaccurate labeling); Dingell, #153, at 2; Poshard, #163, at 1; Estwing, #179, at 1.

[31] UAW, #93, at 1. *See also AFL-CIO/ULSTD*, #48, at 4 (those that want to dilute Made in USA claim are companies that have destroyed jobs in U.S. moving all or part of their manufacturing operations to the Third World for lower wages and higher profits); Estwing, #179, at 1 (lowering standard would force domestic manufacturers to import components to remain competitive, effectively shipping U.S. jobs overseas; Traficant, #144, at 1 (diluting the standard would have a negative impact on U.S. workers); IBT #107, at 3 (consumers will not use power to buy products that are "Made in USA" if they do not know what that means; would cost U.S. jobs); Quillen, #168, at 1; Taylor, #169, at 1; Vaughn & Bushnell, #97, at 4, #191. at 1; American Hand Tool, #91, at 5, 10; Precision-Kidd, #142, at 1; Centerville, #145, at 1.

[32] AGs, #43, at 12–13. *See also* UAW/RWC, #33, at 1–2. (current standard is "simple and honest" and cost to domestic commerce in maintaining standard is minimal); Deere, #57, at 2; Vaughan & Bushnell, #97.

[33] Traficant, #144, at 1, *See Also* Dingell, #153, at 1; Taylor, #169, at 1; Citizen Action, #181, at 2; Levin, #332, at 1; Jeanne Archibald for American Hand Tool, Tr. at 231–232 ("people seem to be ignoring . . . that there is a choice. You can make an unqualified claim if you meet that standard, but you have full discretion to make qualified claims and, in fact, to tell the consumers whatever is the domestic content of your product. So it isn't as if it's an either/or choice. There are many variations that you can develop.").

[34] Deere, #57, at 2. *See also*, AGs, #43, at 6 (manufacturers can still take advantage of fact that a significant portion of product is made in U.S. under FTC standard; manufacturers' insistence that consumers understand that products represented as made in USA have substantial foreign content cannot be reconciled with their separate claim that disclosure dilutes the attractiveness of the made in USA claim); American Hand Tool, #186, at 5 (qualified claims protect consumers' interests, while accommodating companies' desire to advertise the U.S. content of their products); UAW, #174, at 1; AFL-CIO/ULSTD, #48, at 4. *But see* Vaughn & Bushnell, #97, at 4 (supporting current standard, but stating that qualified claims would generate confusion among hand tool consumers).

[35] Diamond Chain, #55, at 2.

[36] *Id.* Some commenters did not explicitly support the "all or virtually all" standard but nevertheless cited the benefits of qualified claims. *See, e.g.*, Brother International Corp. and Brother Industries USA, Inc., ("Brother"), #109 at 2 (qualified claims "provide an effective and nonburdensome alternative for advertisers who do not wish to undertake whatever burdens may apply now or in the future with respect to unqualified claims for products that are not made entirely with U.S. labor and U.S. components.") BGE, Ltd. ("BGE"), #60, Exhibit A, at 3 (in most cases, "there would be little difficulty in making truthful comparative or qualified claims" that reveal a product is not entirely made in the U.S., provided that the claims are simple and that all relevant government agencies have the same requirement); Cranston Print Works Co. ("Crantson"), #38, at 3 (foreign custom officials would not prohibit qualified "Made in USA" claims, and even if they did, different label systems, one for domestic sales and one for export sales would not be problematic); U.S. Customs Service ("Customs"), #29, at 5–6, 7 (suggesting qualified claims may be appropriate for goods substantially transformed in the United States from imported components and noting that Canadian Customs accepts various forms of marking for goods of NAFTA parties, including "Made in USA with foreign components"); American Advertising Federation ("AAF") #100, 5–6 (a flexible standard "whereby a manufacturer has the ability to make specific, qualified, and substantiated claims about a product" would "further competition based on American content of products, as well as increase consumer knowledge by allowing more qualitative information into the marketplace.") *See also* Office of the District Attorney, County of Santa Cruz, CA (attached to submission of National Association of Consumer Agency Administrators ("Santa Cruz DA"), #137 (clear, short disclosures such as "USA 80%" on labels would be preferable; consumers most likely view "Assembled in USA" as suggesting a product with a majority of foreign content; print ads logically would have more complete disclosures of percentages and where a product is assembled).

[37] American Electronics Association ("AEA"), #87; American International Automobile Dealers Association ("AIADA"), #85; BGE, #60; Johnson & Murphy ("Johnston"), #324; Korea Fair Trade Commission ("KFTC"), #141; Processed Plastic

Several of the commenters opposing the "all or virtually all" standard asserted that the standard is no longer consistent with consumer perception. According to these comments, consumers understand that, in today's globalized marketplace, there are few purely domestic products, and that therefore, consumers do not perceive products advertised or labeled "Made in USA" as containing all or virtually all domestic materials and labor.[38] For example, the Footwear Industries of America, Inc., stated:

We believe that the modern American consumer does not assume that a "Made in USA" label means 100 percent domestic content. There can be no doubt that such consumers realize that the United States imports a large variety of raw materials and components for use in the manufacture of finished goods. They obtain this knowledge from information available in the media and from their own experience working in industries more and more reliant on foreign parts.[39]

Similar views were voiced by United Technologies Carrier:

Consumers recognize that the globalization of production and assembly is so far advanced today, that it is difficult to recognize any one particular country as parent to that product. Consequently, consumers realize that it is rare, and virtually impossible, for a product to be "100% Made in U.S.A."[40]

A number of commenters further cited consumer perception studies as indicating that consumers do not believe that "Made in USA" refers only to products made with all or virtually all domestic labor and materials.[41]

Several commenters argued that the current standard does not reflect current manufacturing and global sourcing practices of U.S. firms.[42] These commenters maintained that, because the standard requires such a high degree of domestic content and domestic labor, few companies are able to meet it in today's world market. Packard Bell Electronics, for example, highlighted the problems associated with trying to obtain U.S.-made components for its products:

In many industries, and particularly in the consumer electronics area, some types of components are not manufactured at all in the U.S., or are domestically manufactured in such small quantities that it is impossible to obtain the volume of U.S.-made components necessary to support large manufacturing operations.[43]

These commenters contended that a standard that is unattainable for so many industries no longer makes sense.[44]

Many of the commenters opposed to the "all or virtually all" standard asserted that the strictness of the standard deprives manufacturers of a selling tool that could help preserve American jobs and that qualified claims are not an adequate remedy to this problem. Manufacturers who assemble products here of foreign and domestic components, they argued, cannot sufficiently distinguish themselves from manufacturers with lower (or zero) domestic content unless they are permitted to use "Made in USA" claims. In its comment, Stanley Works contended that imposing the current standard would require many companies to stop claiming their products are "Made in the USA" and thereby mislead consumers, who would be unaware that important attributes of tools, such as fit and durability, were attained in American plants through the labor of American workers.[45] Similarly, the American Electronics Association maintained that the current standard "produces a result contrary to the Commission's goal of creating informed consumers."[46]

Some opponents of the standard further argued in their comments that the current standard penalizes companies committed to maintaining production facilities in the United States. Companies that use some foreign components or labor in manufacturing may be forced to move production abroad if they are unable to get the benefits of an unqualified "Made in USA" label. As a result, the commenters contended, the "all or virtually all" standard can have the perverse effect of moving high-paying jobs overseas, and shrinking the American manufacturing base.[47]

Another criticism of the Commission's "all or virtually all" standard is that it is inconsistent with the country of origin rules applied by other federal agencies and foreign governments.[48] The federal standards most frequently cited by commenters in support of this point were the Buy American Act, which requires that to be eligible for federal procurement certain

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Company ("Processed Plastic"), #167; U.S. Sen. William S. Cohen ("Cohen"), #199; U.S. Reps. Joseph P. Kennedy, Edward J. Markey, and Richard Neal ("Kennedy"), #67; U.S. Reps. Neil Abercrombie, Peter Blute, Marty Meehan, John Joseph Moakley, and John W. Olver ("Abercrombie"), #25.

[38] *See, e.g.*, Brown and Williamson Tobacco Co. ("B&W"), #96, at 2 (current standard is inconsistent with consumer expectations); Compaq Computer Corp. ("Compaq"), #62, at 2 (consumers of electronic products tend to be both technologically savvy and reasonably well-informed about the globalization of the electronics industry); Caterpillar, Inc. ("Caterpillar"), #104, at 2; Minnesota Mining and Manufacturing Co. ("3M"), #98, at 14.

[39] Footwear Industries of America ("FIA"), #52, at 1, #177, at 2–3. *See also* 3M, #98, at 10, 14; Automotive Parts Rebuilders Association ("APRA"), #30, at 5; Footwear Distributors and Retailers of America ("FDRA"), #27, at 2, #172, at 1–2; National Council on International Trade Development ("NCITD"), #89, at 3; New Balance Athletic Shoe, Inc. ("New Balance"), #44, at 3; Sunbeam Corp. ("Sunbeam"), #39, at 2; Toyota Motor Sales USA, Inc. ("Toyota"), #26, at 3.

[40] United Technologies Carrier ("UTC"), #94, at 2.

[41] *See e.g.*, FIA, #52, at 1 (1991 FTC consumer perception study found that approximately one half of respondents believed "Made in USA" claim meant less than 80% of parts and labor were domestic), #177, at 2 (1995 FTC consumer perception study indicates that only an insignificant minority of consumers understand "Made in USA" claims to mean that all or virtually all of a product's labor and materials are of domestic origin); Rubber and Plastic Footwear Manufacturers Association ("RPFMA"), #178, at 1 (1995 FTC consumer perception study found that a majority of participants were willing to accept a "Made in USA" claim on products that contained a significant amount of foreign parts, provided the product was assembled in the U.S.); Bicycle Manufacturers Association of America ("BMA"), #195, Appendix, at 1 (1995 FTC consumer perception study indicates that only an insignificant minority of consumers understand "Made in USA" to mean that 100 percent of a product's parts and labor are of U.S. origin).

[42] *See, e.g.*, Compaq, #62, at 2; Kennedy, #67, at 2; U.S. Rep. Glen Browder ("Browder"), #119, at 1; U.S. Sen. John Kerry ("Kerry"), #68, at 1; Toshiba America Electronic Components, Inc. ("Toshiba"), #34, at 2–3.

[43] Packard Bell Electronics ("Packard Bell"), #64, at 2.

[44] *See, e.g.*, Polaroid Co. ("Polaroid"), #90, at 4–5; Toyota, #26, at 5 (no motor vehicle sold in the U.S. would meet the "all or virtually all" standard); Sunbeam, #39, at 2 (while manufactured or assembled in the U.S., a number of its products cannot be advertised as "Made in USA" because some small component is sourced from overseas); AIADA, #85, at 2 (no vehicle in mass production today is made with virtually all U.S. parts); U.S. Rep. James B. Longley, Jr. ("Longley"), #118.

[45] Stanley Works ("Stanley"), #59, at 5, #194, at 1 (current standard deprives consumers of information that all the physical qualities and performance characteristics that make the product desirable to them are a result of American labor, technology, and capital equipment). *See also* Sunbeam, #39 (current standard makes it hard for consumers to distinguish between a product that consists of an insignificant amount of foreign components or materials from one that is mostly of foreign origin and imported into the U.S.).

[46] AEA, #87, at 1. *See also* AIADA, #85, at 3 (current standard would only serve to limit the flow of meaningful consumer information); Balluff, Inc. ("Balluff"), #69, at 1 (current standard does not help in decision-making process; only hinders manufacturer from labeling product appropriately).

[47] *See e.g.*, Abercrombie, #25, Kennedy, #67; Luggage and Leather Goods Manufacturers of America ("LLGMA"), #23, at 2.

[48] *See, e.g.*, Cohen #199; Gates Rubber Co. ("Gates"), #50, at 2–3; International Electronics Manufacturers and Consumers of America ("IEMCA"), #99, at 2–3, #189, at 2; Kerry, #68; Longley, #118; NCITD, #89, at 2; Polaroid, #90, at 1, 10; Seagate Technology ("Seagate"), #95, at 2 (Commission should implement Buy American standard). *Cf.* General Services Administration ("GSA"), #106, at 1 (Commission should "explore the viability" of standardizing its standard with one or more of the federal government's procurement or trade standards).

products must contain 50% domestic content and be subject to a final act of manufacture in the United States, and the regulations of the U.S. Customs Service, which look to the country in which the product was last substantially transformed. These commenters asserted that the Commission's standard imposes yet another regulatory burden on manufacturers.[49] For example, the National Electrical Manufacturers Association stated:

The Commission's labeling standard is inconsistent with other Federal government programs requirements, resulting in greater inefficiencies and costs for the American manufacturer. An American product should be an American product no matter the market in which it is sold. Under today's conflicting rules, however, NEMA member companies face high administrative costs associated with compliance to numerous calculations.[50]

Several commenters maintained that the current standard also conflicts with other foreign countries' marking rules and thus imposes significant costs on American companies, making American products less competitive abroad. For example, 3M asserted that many countries require that imported goods be marked with the country of origin, and would accept a product labeled as "Made in USA" if it satisfied Custom's NAFTA Marking Rules. 3M stated, however, that, in many cases, under the Commission's current standard, it cannot sell that same product in the United States with a "Made in USA" label and must therefore either develop two inventories of product, one with a "Made in USA" label for export and another with no origin mark for the United States, or relabel its products.[51]

A further criticism raised by some opponents of the "all or virtually all" standard was that the standard is not adequately defined and therefore fails to provide sufficient guidance to industry. Commenters noted, for example, that the standard as it currently exists gives no guidance as to how far back in the production process a manufacturer must go in determining U.S. parts, material, and labor content. 3M contended that the current standard does not provide a clear method for determining permissible foreign content, and argued that, as a result, many manufacturers are unable to properly determine when they may mark a product "Made in USA."[52] Moreover, the Joint Industry Group stated:

The multiple questions asked in [the Commission's April 1996] request for comments regarding what constitutes a 'step' back in manufacturing is indicative of the complexity and subjectivity of this yet to be defined methodology. In a practical business sense, this complexity and subjectivity can only evolve into a standard that is equally cumbersome.[53]

Finally, some of those commenters opposing the current standard specifically rejected the utility of using qualified claims. Qualified claims, they contended, will not solve the problems with the "all or virtually all" standard, but would instead be costly, impractical, and confusing to consumers. One commenter suggested that a qualified claim, such as "Made in USA with domestic and foreign parts," would not allow consumers to distinguish between goods made with significant or minimal foreign parts and would not assist with their decision-making process.[54] Another commenter argued that consumers examining a qualified claim would not be informed that a manufacturer was unable to obtain all of a product's components domestically, and that, without the cost savings realized from sourcing some components offshore, the manufacturer could not continue to maintain its U.S. factory and price its products competitively.[55]

Some comments also contended that qualified claims put U.S. manufacturers at a disadvantage relative to importers who, in most instances, can indicate a single country of origin, regardless of the origin of a product's components.[56] Other commenters expressed concern that space limitations may prevent a lengthy disclosure on the labeling of small consumer items,[57] and that such labeling may not comply with the customs requirements of foreign countries, which, they asserted, generally require a simple, clear "Made in USA" label.[58] Some comments noted that, because sourcing requirements and parts costs change continually, any specific qualifier based on percentages, such as "Made in USA using 65% U.S. parts," would have to be constantly changed at great expense to the company.[59]

C. Percentage Content Standard

1. Comments Supporting a Percentage Content Standard

Approximately 13 individual consumers and 21 other commenters favored the adoption of a specific percentage content standard for unqualified "Made in USA" claims. Supporters of this standard include 4 members of Congress;[60] 6 trade associations;[61] 10 manufacturers and other corporations,[62] and 1 nonprofit organization.[63]

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[49] *See, e.g.*, Caterpillar, #104, at 2; Seagate, #95, at 2.

[50] National Electrical Manufacturers Association ("NEMA"), #102, at 3.

[51] 3M, #98, at 5. *See also* Joint Industry Group ("JIG"), #88, at 2 (the "multiplicity of origin rules" has resulted in increased costs for U.S. manufacturers, requiring them to establish special packaging and re-labeling facilities and to design and manufacture multiple forms of packages for different destination markets), #196, at 3–4; Okidata ("Okidata"), #42, at 3 (it is expensive and cumbersome for a company to have to apply different labels to the same product depending on the product's destination; different labels and boxes must be printed, the product must be segregated in inventory, and tracking systems are needed to ensure that a product is sent to the specific country destination to which the product is labeled); Longley, #118, at 1 (the Commission should "consider a standard that conforms to that articulated by other government agencies so that domestic manufacturers are not disadvantaged by: (1) having to meet one standard for their exports and another for their goods sold within the U.S.; and (2) having to provide more information on labels than what is required to be placed on the labels of imported goods. U.S. industry must not be placed at a competitive disadvantage.").

[52] 3M, #98, at 4. *See also* NCITD, #89, at 2 (because there is no reliable definition, the current standard is difficult to follow; not clear how far back in the manufacturing process a company must go to meet the standard—for example, whether the iron ore that became the steel tubing for a bicycle must have been mined in the U.S. before the bicycle can claim to be made in the U.S.); Paul Gauron for New Balance, Tr. at 162; Balluff, #69, at 2.

[53] JIG, #196, at 2.

[54] FIA, #52, at 3, #177, at 7.

[55] New Balance, #44, at 22–23. *See also* BMA, #86, at 6 (a claim that a bicycle was "Assembled in the USA from 75% US parts and labor" would fail to "communicate the simple, accurate 'Made in USA' message that Huffy, Murray, and Roadmaster are entitled to convey: that their bicycles are produced in American factories and represent the highest commercially feasible level of American materials, labor and craftsmanship at a certain price level").

[56] *E.g.*, New Balance, #44, at 22–23.

[57] *E.g.*, FIA, #52, at 3: 3M, #98, at 17 (manufacturers may have to increase a product's packaging size to accommodate a lengthier qualified marking).

[58] *E.g.*, #52, at 3; JIG, #88, at 11 (qualified origin claims are often not recognized as legitimate claims resulting in customs delays or denied entry of merchandise); 3M, #98, at 19–20 (it is not certain that other foreign governments would accept a qualified mark, thereby requiring costly relabeling of products); Polaroid, #90, at 8.

[59] *E.g.*, Electronic Industries Association ("EIA"), #84, at 4, #193, at 4: NEMA, #102, at 5 (qualified claims are unrealistic due to the complex nature of electrical products and the administrative costs associated with calculating comparative or qualified claims).

[60] Kerry, #68, Browder, #119, U.S. Rep. Barney Frank ("Frank"), #140 (favoring permitting manufacturers to use a "Made in USA" label when they have achieved "a certain minimum amount of domestic content," but not specifying a specific minimum percentage); Longley, #118.

[61] APRA, #30, BMA, #86, at 2–3; FIA, #52, at 3–4, 6, 8–9, #177; LLGMA, #23, Packaging Machinery Manufacturers Institute ("PMMI"), #56, RPFMA, #32, at 2,6, #178.

[62] American Export Association, ("American Export"), #291; B&W #96; Conair Corp. ("Conair"), #155; Cranston, #38; New Balance, #44, #197; Packard Bell, #64; Seagate, #95; Secant Chemicals, Inc. ("Secant"), #247; Sunbeam, #39; UTC, #84. *See also* Whirlpool Corp. ("Whirlpool"), #54 (supporting adoption of the NAFTA preference rules or, alternatively, a 50% content standard.)

[63] Made in the USA Foundation ("MUSA Foundation"), #28.

Of those commenters supporting a standard based on a percentage content, approximately 3 supported an 80% domestic content standard for unqualified "Made in USA" claims and at least 6 others supported a 75% standard.[64] Most, however, favored a standard permitting "Made in the USA" claims for items that undergo final assembly in the United States and consist of more than 50% domestic content.

Many of those commenters favoring a 50% standard argued that it is more practical than the "all or virtually all" standard in today's world. The Bicycle Manufacturers of America, for instance, suggested that requiring a domestic contribution of at least 50% would be "more commercially realistic" given the globalization of the economy.[65] The Rubber and Plastic Footwear Manufacturers Association stated: "Any formula which deviates to a considerable degree from this proposal would have the effect of defeating consumers' desires for American-made rubber footwear or slippers, since the domestic plants of most such manufacturers are competitively dependent on the need to use one or more imported components."[66]

Some comments suggested that adoption of a 50% standard would take into consideration that particular components or raw materials may be unavailable in the United States. Packard Bell Electronics stated that, to the best of its knowledge, no personal computers sold in the United States currently are able to carry a "Made in America" label because none is made with all or virtually all U.S. components and labor. In part, this is because in many industries, particularly in consumer electronics, some types of components are not manufactured at all in the United States, or are domestically manufactured in such small quantities that it is impossible to obtain the volume of U.S.-made components necessary to support large manufacturing operations.[67] Other commenters agreed.[68]

In addition to being more realistic than an all or virtually all standard, some commenters also argued that a 50% standard would ensure that a "Made in the USA" claim would be limited to products with substantial U.S. content. The Rubber and Plastic Footwear Manufacturers Association concluded that a 50% standard "requires a 'substantial' share of components and labor to be of American origin," and provides "consumers who prefer American-made products because of their desire to preserve American jobs and/or quality" with the information they need to choose between competing products and manufacturers with an "effective way of distinguishing between the output of American plants and that of foreign plants."[69] By contrast, it asserted that "a final assembly, substantial transformation or significant processing test, standing alone without a required percentage of domestic value and/or labor, would so dilute the significance of a Made in USA logo * * * as to be virtually meaningless."[70] Seagate Technology similarly maintained that a standard that requires that more than 50% of the value of the parts and components be domestically produced and that the final act of "manufacture" take place in the U.S. is sufficient to protect consumers' expectations concerning the "Made in USA" mark.[71]

Some commenters further argued that a 50% U.S. content standard also would support the creation or retention of U.S. jobs. New Balance Athletic Shoe, Inc., for example, asserted:

> For industry, given that there are strong economic incentives to move offshore and dramatically reduce labor and other costs, whatever advantage might accrue from use of the "Made in USA" label provides at least some incentive to stay in the U.S. to counterbalance the clear economic benefits of locating elsewhere. * * * A standard allowing the use of "Made in USA" claims when a manufacturer uses a majority of domestic materials and labor would help to level a very uneven playing field.[72]

Footwear Industries of America agreed, stating that a 50% U.S. content standard "would have the advantage of encouraging American companies to do more domestic sourcing so that they could proclaim their American content," while still giving them sufficient flexibility to maintain their labeling even if their sourcing changed somewhat during the manufacturing process.[73]

Some commenters supporting a 50% standard pointed to the wide variety of regulations governing domestic content claims both within the U.S. and internationally (e.g., Customs' rules, FTC standards, the Buy American Act, the North Atlantic Free Trade Agreement, the World Trade Organization's potential standards), and suggested that the Commission adopt a standard that is consistent with an existing test.[74] Seagate Technology urged the Commission to adopt the 50% standard of the Buy American Act, arguing that this is an established standard with which the industry is well-versed and knowledgeable, and that it would avoid burdening U.S. manufacturers with yet another new and different standard.[75]

Seagate Technology, along with several other commenters, further maintained that the Buy American Act's 50% U.S. content standard, coupled with a requirement for final assembly in the U.S., would be consistent with consumers' expectations and the need for accurate product information. Thus, Seagate asserted:

> The Buy American Act standard has been in existence for more than 60 years and is well understood in the computer industry. It is sufficient to protect consumers' expectations concerning the "Made in USA" mark because it both requires (1) a significant amount of U.S. content, i.e., more than 50% of the value of the parts and components must be domestically produced and (2) that the final act of "manufacture" take place in the United States. If clear guidelines are developed concerning the elements of value that are considered in the 50% test as well as the meaning of the term "manufacture," the Commission can be assured that it has protected consumers" expectations that significant U.S. labor and jobs were involved in the creation of the product that is being purchased.[76]

[64] American Export, #291 (supporting an 80% standard); MUSA Foundation, #28, at 4, 14 (supporting a 75% standard; in addition, would permit a product to be labeled "Assembled in USA" if it has 50% or more U.S. content); APRA, #30, at 5 (supporting a 75% standard and asserting that this would allow items "substantially processed or assembled" in U.S. to claim "Made in USA" without diluting message to consumers); Sunbeam, #39, at 2 (supporting a standard requiring at least 75% of cost attributable to component parts made in U.S., and at least 75% of cost of labor performed in assembling the product into the form in which it is introduced, delivered, sold offered, or advertised, to be incurred in U.S.). In addition, approximately two individual consumers supported an 80% standard; three supported a 75% standard; two supported a 70% standard; and one supported at 65% standard.

[65] BMA, #86, at 2.

[66] RPFMA, #32, at 6.

[67] Packard Bell, #64, at 2.

[68] *See e.g.* Seagate, #95, at 3; Whirlpool, #54, at 1–2.

[69] RPFMA, #32, at 2, 6.

[70] Id., #178, at 2–3.

[71] Seagate, #95, at 6 (citing with approval the Buy American Act).

[72] New Balance, #44, at 21–22, #197, at 3.

[73] FIA, #52, at 3–4.

[74] *E.G.*, Seagate, #95, at 3, 6; B&W, #96, at 2–3; American Association of Exporters and Importers, ("AAEI"), #37, at 2, 4–5; Balluff, #69, at 2.

[75] Seagate, #95, at 2–3.

[76] *Id.* 2. *See also* RFPMA, #32, at 6; New Balance, #44, at 26–27; B&W, #96, at 2 (supports adoption of a Buy American Act 50% domestic content standard because it will provide certainty to manufacturers and still properly protect consumer expectations); FIA, #52, at 4, #177, at 3 (1995 FTC consumer perception study supports view that 50% U.S. content plus final assembly in U.S. would

Continued

2. Comments Opposing a Percentage Content Standard

Commenters who specifically opposed adopting a percentage content standard for unqualified "Made in USA" claims generally fell into two groups. One group, composed of at least 14 commenters[77] (and generally supportive of a substantial transformation-type standard) was concerned that the calculations required by any percentage standard would be onerous. The other, composed largely of those who supported the current standard,[78] was primarily concerned that a 50% standard was too low and unlikely to result in an appropriate level of U.S. content.

A number of commenters opposing a percentage content standard stated that adoption of any such standard would be arbitrary and emphasized that a single percentage would not be appropriate for all manufacturing processes. In the International Mass Retail Association's view, the Commission cannot pick a single number—such as 75% or 50% value—and create a yardstick that will be fair or non-deceptive, because the value added depends so much on the type of product.[79] The Joint Industry Group agreed, maintaining that the selection of any quantitative basis for an advertising or labeling claim is necessarily arbitrary. If a 50% U.S. content rule is adopted, for example, there is likely to be no appreciable difference in goods featuring 49.5% and 50.5% U.S. content, respectively—although the goods would have different labeling and advertising requirements under such a test.[80] Further, Gates Rubber Co. asserted that differences in relative domestic content may be found where identical constituent parts are imported from different countries at different costs. Alternatively, the same operations can be performed in the U.S. yet the domestic content will vary based on wage rates, yields, variable material costs, capacity utilization, or other factors. Fluctuations in exchange rates could cause origin to change over time, if a bright-line percentage-of-value test is adopted.[81]

Several commenters opposed adoption of a percentage content standard because of the administrative burdens and costs it would impose on companies. Compaq Corp., for example, stated that percentage content tests are arbitrary, difficult to administer, and can lead to absurd or anomalous results.[82] Similarly, the Joint Industry Group and Polaroid maintained that minor changes in a producer's sourcing patterns, in the price for a given material, and variances in depreciation, units produced and other fixed and variable dependent cost allocations can change the result of a country-of-origin marking determination.[83] According to Deere and Co., many components may be outsourced and shipped to the manufacturer in an assembled state. Although unknown to the manufacturer, some of the parts of the purchased component may be foreign sourced. Therefore, companies may face many problems in determining the source of all subcomponents and then determining the "Domestic Content" of a finished product.[84] The Joint Industry Group and Polaroid asserted that a percentage content standard also would require companies to conduct detailed internal cost analyses in order to accurately determine the exact domestic content for their products. Furthermore, as sourcing patterns shift, and prices of materials, labor, and other fixed and variable cost allocations change, companies would have to update their cost/value analyses constantly.[85] Thus, a cost-of-production or value-added requirement, these commenters argued, could add a burdensome and complicated new layer to the rules-of-origin requirements already faced by manufacturers.

The International Electronic Manufacturers and Consumers of America summarized the burdens:

> An * * * important reason for opposing a percentage content standard is the complexity such a rule would impose on producers and marketers of goods. A percentage content standard, no matter what specific percentage is chosen, poses an accounting nightmare for producers of sophisticated electronic products, with components and production costs from multiple sources. A cost-of-production or value added requirement would add a burdensome and complicated new layer to the rules of origin requirements already faced by IEMCA members. Moreover, * * * cost fluctuations for components in electronic products would render such a system completely inconsistent and unworkable; a product might pass, *e.g.*, a 50% content test one day and, after component cost fluctuations, fail the same test on another day, even though the exact same product using the exact same foreign and domestic inputs is "made" in the United States.[86]

Given all of the variables in the production process, one participant in the workshop, a representative of the American Association of Exporters and Importers, argued that it would very difficult to know in advance whether the finished product would meet the percentage threshold. The American Association of Exporters and Importers representative expressed concern that a manufacturer may prepare advertising and packaging fully anticipating to be able to claim "Made in the USA" for the product, only to find that, during production, a currency fluctuation occurs and the product no longer meets the standard.[87]

For this reason, some commenters also suggested that a percentage content standard would be expensive and difficult for the Commission to enforce. The Stanley Works and the Joint Industry Group maintained that the enforcement effort required would be enormous and wholly inconsistent with the current government downsizing trend.[88]

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satisfy consumer perception of significant processing in U.S.), at 6–7 (50% U.S. content plus final assembly in U.S. would generally ensure that product would have a new name, character and use as a result of U.S. operations would fulfill Customs' substantial transformation requirements, and would comport with consumer perceptions).

[77] AAEI, at 346–347; Balluff, #69; Caterpillar, #104; Compaq, #62; Gates, #50; IEMCA, #189; International Mass Retail Association ("IMRA"), #46; JIG, #88; NCITD, #89; Polaroid, #90; Red Devil, Inc. ("Red Devil"), #139; Stanley, #59; 3M, #98 U.S. Watch Producers in the U.S. Virgin Islands (Watch Producers"), #192; Writing Instrument Manufacturers Association, Inc. ("WIMA"), #133. *See also* AAF, #100 (advocating a case-by-case approach and criticizing a bright-line percentage standard).

[78] *E.g.*, ACa, #43; American Hand Tool, #186; Deere, #57; Jefferson Democratic Club, #61; Vaughan & Bushnell, #191; Weldbend, #190. Most of those supporting a 100% standard, of course, either explicitly or implicitly rejected adoption of a lower percentage.

[79] IMRA, #46, at 8–9. *See also* Stanley, #59, at 8 (no specific percentage content could be applied across the board that could serve as a useful guide for determining whether consumers may be deceived).

[80] JIG, #88, at 8–9. *See also* Polaroid, #90, at 6; AAF, #100, at 3–4 (strict thresholds, *e.g.*, 75%, likely to deprive consumers of valuable information; there is no useful distinction between products 70% and 75% American made).

[81] Gates, #50, at 2.

[82] Compaq, #62, at 5 (noting, for example, that two companies performing the same operations in U.S. may receive different origin determinations simply because they paid different prices for a given material or component).

[83] JIG, #88 at 8–9, #196, at 2; Polaroid, #90, at 5–6. (two companies performing the same operations in U.S. may receive different origin determinations simply because they paid different prices for a given material or component).

[84] Deere, #57, at 1.

[85] JIG, t88, at 9, #196, at 2; Polaroid, #90, at 7. *See also* #98, at 18 (the added accounting requirements associated with a value content test would be overwhelming); WIMA, #133, at 3, 5 (questions will continually arise regarding accounting, valuation and profit methodology; whatever the specific percentage standard, would require a complex set of calculations); NCITD, #89, at 3 (would require substantial investigation, calculation, and paperwork from too many sources).

[86] IEMCA, #189, at 6.

[87] Gail Cumins for AAEI, Tr. at 346–247.

[88] Stanley, #59, at 9; JIG, t88, at 9–10. *See also* Polaroid, t90, at 7–8; WIMA, t133, at 5 (percentage content standard would require constant case-by-case basis examination by the FTC).

The Attorneys General expressed similar reservations, albeit from the contrasting perspective of "all or virtually all" supporters, about the application of a percentage content standard and the difficulty of enforcing such a standard. In addition, the Attorneys General suggested that in some circumstances a percentage content standard might distort the relative weight of U.S. and foreign content. The Attorneys General thus urged the Commission not merely to apply mechanically such a standard:

> In applying the formula, the FTC would need to create strict definitions of raw materials and would have to anticipate an endless number of contexts in which a manufacturer might wish to make a *Made in the U.S.A.* claim. While cost might be the best way to compare domestic and foreign content in many instances, sheer monetary measures are not universally appropriate. Indeed, rote application of any formula could lead to the anomalous result that a shirt made in a "sweatshop" in a foreign country from materials originating in the U.S.A. could be labeled as *Made in the U.S.A.* if the cost of the labor comprises a small portion of the product's total cost. Moreover, we have seen no consumer surveys linking consumer perception of *Made in the U.S.A.* to the cost of component parts as opposed to size, prominence or number of the component parts.[89]

Several commenters also opposed a percentage content standard because it does not reflect consumer understanding. The International Electronics Manufacturers and Consumers of America, for example, argued that the consumer survey results did not demonstrate that consumers understand "Made in USA" to mean that some specific minimum percentage of the production costs are domestic, and that there is no indication that buyers of electronic products focus on the specific percentage of domestic or foreign content in their understanding of a "Made in [anywhere]" marking.[90] Some commenters supporting the current standard emphasized that a percentage content standard would be at odds with consumer perceptions by permitting items with significant foreign content to be claimed "Made in USA." The American Hand Tool Coalition, for example, asserted that percentage thresholds, whether 50% or 70%, are inconsistent with consumers' interpretation of "Made in USA" and would result in deception of a large proportion of the U.S. consuming public.[91] Along these lines, a representative from the International Brotherhood of Teamsters stated at the workshop:

> I think one of the real problems as [a] public policy kind of matter is that for the FTC to come out and say it's okay for the "Made in America" standard to apply to something which has as little as 50 percent American content can only lead to increased cynicism, increased disbelief, increased inability of consumers to pay any attention whatsoever, and to have any of these advertising slogans or anything else to have meaning.[92]

Finally, some commenters supporting an "all or virtually all" standard expressed concern that a percentage content standard may hurt domestic jobs and industry. For example, a participant at the public workshop suggested that manufacturers whose domestic content exceeds the minimum percentage required to claim "Made in USA" (for example, 50%) will have an incentive to "move some production offshore so they still stay within whatever is the tolerance level to make the claim, but save on cost."[93]

3. Calculation of U.S. content

Under any percentage content standard, a marketer must determine how to measure the value of U.S. content. In response to questions posed in the Commission's **Federal Register** notices, a number of comments discussed which costs should and should not be included, as well as how far back in the manufacturing process to go in making the calculation.

a. Costs to be included. There was a considerable range of opinion as to the type of costs that should be included in a determination of U.S. content. One commenter, the Retired Workers Council, Region I-A, of the UAW, suggested that any calculation of U.S. content should be based on labor hours and should exclude "[o]verhead, advertising [and] financing at any point."[94] At the other end of the spectrum, Balluff, Inc., proposed that the definition of U.S. content should extend to costs of development, engineering, profit, and the overhead costs to maintain the product's made in USA status.[95] The largest number of commenters suggested that all direct manufacturing costs, including manufacturing overhead, be included in the computation of U.S. content.[96] Hager Hinge stated "[T]he calculation should be made on a labor and material cost basis only, including direct overhead."[97] Conair Corp. suggested that the determination of domestic content should include labor and fringe benefits for shipping, receiving, warehousing, and packaging as well as overhead and the cost and amortization of capital equipment and square footage.[98]

A few comments specifically addressed whether profit should be included in the calculation of U.S. content. Seagate Technology stated that the profit made by the final assembler in the U.S. should constitute part of the domestic value.[99] Hager Hinge, however, insisted that "profit is an entirely separate issue and should not be a part of the calculation."[100]

The commenters also expressed a variety of opinions as to whether, and to what extent, raw materials should be included in the calculation of U.S. content. At least five commenters maintained that raw material costs should be included in final product cost.[101] Others, however, suggested that raw materials that were not direct inputs into final products should be excluded.[102] A few commenters suggested that the Commission exclude from total product cost only a narrowly defined class of raw materials. The Ad Hoc Group, for example, proposed

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[89] AGs, #43, at 7.

[90] IEMCA, #189, at 6.

[91] American Hand Tool, #186, at 21. *See also* Vaughn & Bushell, #97, at 3–4 (would depart from consumer perceptions and generate considerable confusion in the marketplace; even 90% threshold could permit some tools manufactured with foreign-forged metal to qualify for the "Made in USA" label; consumers would not be able to distinguish between genuine domestically forged metals and imported substitutes).

[92] Sarah Vanderwicken for IBT, Tr. at 250–251.

[93] Jeanne Archibald for American Hand Tool, Tr. at 348. *See also* UAW, #93, at 3.

[94] UAW/RWC, #33, at 2.

[95] Balluff, #69, at 3.

[96] *E.g.*, FIA, #52, at 1, 4, 6–9, #177, at 1, 4–5; New Balance, #44, at 26. *See* RPFMA, #32, at 5, #178, at 4; Dynacraft, #173, at 9; ("The Ad Hoc Group"), #183, at 2–3; American Hand Tool, #186, at 30; AAEI, #187, at 5; and Hager, #160, at 2.

[97] Hager, #160, at 2.

[98] Conair, #155, at 1.

[99] Seagate, #95, at 6. *See also* Balluff, #69, at 3.

[100] Hager, #160, at 2. *See also* UTC, #94, at 2; NEMA, #102, at 8; American Hand Tool, #186, at 30; and FIA, #52, at 8.

[101] MUSA Foundation, #28, at 12–13; Seagate, #95, at 6; Conair, #155; American Hand Tool, #186, at 17–20; AAEI, #187, at 6. *See also* UAW, #174 at 3 (in suggesting further definition of the "all or virtually all" standard, would not create a blanket exception for all raw materials because, for some products, raw materials will account for a large share of final product cost, while for others, raw material costs will be negligible).

[102] FIA, #52, at 6–7 (include raw materials in cost of materials but only if within one-step back; if not, exclude because it is infeasible to make sellers determine the source of subcomponents and other inputs that are incorporated into the parts they purchase); Balluff, #69, at 3 (raw materials costs should be used in determining the calculation for a subassembly if the only product the company was producing was from raw material, *e.g.*, steel manufacturers, oil refineries, diamond producers). *See also* B&W, #96, at 3 (foreign raw materials should be considered part of U.S. content if they undergo significant processing in the U.S. and are then used further in producing the finished product).

excluding natural resources (which it defined as "products such as minerals, plants or animals that are processed no more than necessary for ordinary transportation") that are not indigenous to the United States.[103] Similarly, the Attorneys General indicated that only materials "not significantly transformed from their natural conditions" should be excluded.[104] Finally, some commenters proposed industry-specific limitations on the inclusion of raw materials.[105]

b. How far back to look. In its October 18, 1995 and April 26, 1996 notices, the Commission sought comment as to how far back in the production process marketers should look in calculating the percentage of total product cost attributable to U.S. content. Specifically, in its questions about implementation of the all or virtually all and percentage content standards, the Commission sought comment on whether it was adequate for a marketer to look only "one step back" in the manufacturing process, *i.e.*, to where the immediate inputs into the final product were produced, or whether the marketer should look further back, *i.e.*, to where the subcomponents that went into that input were produced. In other words, in determining what percentage of a refrigerator is U.S. content, is it adequate to know that the compressor underwent final production in the United States, or must the marketer also inquire as to where the parts that make up that compressor were made? The Commission further sought comment on how to define a "step" for these purposes.

Most of the commenters who addressed how far back manufacturers should look to determine the amount of domestic content advocated a "one step back" approach.[106] They contended it would be unduly burdensome and impractical to require manufacturers to make inquiries beyond the suppliers from whom they purchase materials or components.[107] Footwear Industries of America, for example, explained:

> While manufacturers should be able to determine the source of raw materials and components they purchase directly, it is entirely infeasible to make sellers determine the source of subcomponents and other inputs that are incorporated into the parts they purchase. Suppliers often buy inputs from a variety of sources, depending on market conditions, and do not keep track of which inputs go into which end product. To require such comprehensive tracking would be difficult for every manufacturer, but exceptionally hard for those that use a substantial quantity of small inputs from various countries.[108]

And, in a similar vein, the Rubber and Plastic Footwear Manufacturers Association commented:

> Anything beyond one step back would create an unduly formidable burden which manufacturers should not be expected to meet, particularly since the net effect on American employment and quality of product would in the vast majority of cases be *de minimis*.[109]

A few commenters supporting an all or virtually all standard submitted comments opposing a "one step back" approach. Dynacraft Industries stated that such an approach was not appropriate for the bicycle industry, and urged the Commission to require that U.S. content be calculated based on all stages of production. It asserted, among other things, that the "one step back" approach could lead to circumvention of the standard by, for example, permitting an unscrupulous party to restructure sourcing to purchase through middlemen in the U.S. and claim the part is of U.S. origin.[110] The American Hand Tool Coalition similarly opposed allowing manufacturers to look only one or two steps back in the manufacturing process to determine the origin of a product's components and therefore the origin of the product. The Coalition asserted that, regardless of how a manufacturing "step" is defined, such an approach would be subject to manipulation and "would conflict with consumers' understanding of 'Made in USA.'"[111]

The United Auto Workers suggested that in most cases, looking "two steps back" to unrelated supplier firms would be sufficient to identify nearly all foreign content. It suggested that "two step back" information would be critical for complex products such as electronics that use imported components.[112] The United Auto Workers also concluded, however, that in many cases obtaining the first tier supplier's U.S. content level ("one step back") should be sufficient.[113]

D. Substantial Transformation Standard

1. Comments Supporting a Substantial Transformation Standard

The Commission received comments from approximately 24 commenters favoring some version of a "substantial transformation" standard.[114] These commenters included 10 trade associations,[115] 12 manufacturers,[116] a law firm specializing in international trade law,[117] and the U.S. Customs Service.[118] While some of the commenters in this group expressed a preference for substantial transformation generally, or for any standard consistent with that of the U.S. Customs Service, others advocated adoption of a specific form of substantial transformation, such as the tariff-shift approach employed by the NAFTA Marking Rules.[119] In addition, some commenters urged the Commission eventually to adopt whatever standard is ultimately

[103] Ad Hoc Group, #183, at 3. *See also* American Hand Tool, #186, at 19–20, (opposing exclusion of raw materials, but supporting a similar definition if such materials are to be excluded); FIA, #177, at 4 (exclude raw materials one-step back only if not indigenous to the United States).

[104] AGs, #43, at 10–11.

[105] *E.g.*, APRA, #30, at 4 (define raw materials in the automotive rebuilding industry to exclude cores, *e.g.*, old motor vehicle parts); EIA, #84, at 7 (raw materials of electronics industry are electronic or mechanical piece parts, *i.e.*, transistors, capacitors, terminals, wiring harnesses, screws, DRAMs, LEDs, plastic parts, which generally are ordered from piece part suppliers). *See also* UAW, #174, at 3 (asserting that the definition of raw materials may not be standard across industries and citing as an example that coated alloy steel could be considered a raw material by some companies and a manufactured product by others).

[106] *E.g.*, LLGMA, #23, at 4; RPFMA, #32, at 5, #178, at 4; FIA, #52, at 1, 6–8, #177, at 1, 3–4; EIA, #84, at 8, #193, at 2–4; Ad Hoc Group, #183, at 2.

[107] *E.g.*, RPFMA, #32, at 5, #178, at 4; FIA, #52 at 7–8, #177, at 3–4.

[108] FIA, #52, at 7. *See also id.*, #177, at 3–4.

[109] RPFMA, #32, at 5. *See also id*, #178, at 4.

[110] Dynacraft, #173, at 8.

[111] American Hand Tool, #186, at 14–17.

[112] UAW, #174, at 2–3.

[113] *Id.* at 3 (noting, for example, that if a part that accounted for 10% of the value of the final product was 50% foreign value, the contribution of this part to the foreign value of the final product would be only 5%; on the other hand, if the 50% foreign part accounted for 30% of final product's value, this foreign content alone would account for 15% of final product's value).

[114] In addition, approximately 4 individual consumers indicated support for a standard by which a product put together or assembled in the United States could be labeled Made in USA even if it was assembled from imported parts.

[115] IEMCA, #99, #189; JIG, #88, #196; U.S. Apparel Industry Council ("USAIC"), #24; WIMA, #133; AAEI, #37, #187; NCITD, #89; Watch Producers, #192; IMRA, #46, #184; American Wire Producers Association ("AWPA"), #65 (advocating adoption of the Customs standard specifically for steel wire, steel wire products and wire rod); Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("Domestic Steel Wire Rope"), #63 (advocating adoption of the Customs standard specifically for steel wire rope).

[116] Balluff, #69; Caterpillar, #104; Compaq, #62; Gates, #50; Okidata, #42; Polaroid, #90; Red Devil, #139; Timkin Co. and Torrington Co. ("Timkin/Torrington"), #51 (advocating adoption of the Customs standard specifically for antifriction bearings); Toshiba, #34; Stanley, #59, #194; 3M, #98, #198. *See also* Packard Bell, #64 (suggesting that adoption of a WTO standard would be the best solution, but supporting a percent content standard in the interim).

[117] Meeks and Shephard ("Meeks"), #105.

[118] Customs, #29 (suggesting for unqualified "Made in USA" claims that a product be substantially transformed in the United States and have a 35% U.S. value-content).

[119] AAEI, #37, #187; Gates, #50; 3M, #98, #198; NCITD, #89; Polaroid, #90.

accepted by the WTO.[120] At least one commenter suggested that adopting the actual Customs rules was less important than that the Commission adopt a standard that, like substantial transformation, focused on the processing of a product rather than on the value of its components.[121] At the workshop, others also voiced support for a "processing" approach.[122]

Many of the commenters favoring a substantial transformation standard expressed concern that the FTC's standard was inconsistent with that of the Customs Service. Some remarked on the incongruity of not being able to mark a product "Made in USA" under FTC policy even though the Customs Service would not require it to be marked with a foreign country of origin.[123] Several of the commenters, moreover, pointed to the benefits associated with using a standard that was consistent with that used by a sister federal agency. If FTC policy was harmonized with Customs rules, Compaq Corp., for example, noted, "manufacturers would not incur the additional expense of monitoring compliance with two potentially conflicting origin criteria."[124] Similarly, the Stanley Works argued that "Use of substantial transformation would unify and harmonize domestic marking regulation. . . . business could look to a single, uniform set of marking regulations."[125] Other commenters noted the number and variety of laws already in existence related to country-of-origin labeling and argued that using the substantial transformation standard used by Customs had the advantage of "not adding to the regulatory burden of U.S. companies."[126]

In a similar vein, a number of commenters noted that because businesses must already comply with Customs requirements, the substantial transformation standard is familiar to industry and can be readily complied with. Thus, the Joint Industry Group asserted that application of the substantial transformation standard will "bring benefits of predictability, transparency, and enforceability to the process."[127] The American Association of Exporters and Importers echoed this view, contending that "the Customs standard, which has been the subject of thousands of administrative rulings and court opinions, will be more objective than the FTC standard, which has never been authoritatively defined."[128] The Writing Instruments Manufacturers Association and the Timkin and Torrington companies also each praised the substantial transformation test for establishing a "bright-line rule."[129]

Perhaps the most frequently cited advantage of the substantial transformation standard, however, was that it is consistent with the standards used by most other countries, and its adoption was seen by many of these commenters as an action that would facilitate international trade. "Obtaining uniformity and flexibility in country of origin labeling," stated the U.S. Apparel Industry Council, "would enable manufacturers to more efficiently supply wearing apparel to an increased number of countries. This benefits consumers and manufacturers alike * * *."[130] Similarly, the American Association of Exporters and Importers noted that adoption of labeling requirements consistent with those of other countries would benefit the increasing number of companies developing international labels for their products.[131]

Many commenters pointed in particular to instances where a manufacturer would not be permitted by the FTC to mark its product "Made in USA," but would be *required* to do so by a foreign country when the same product is exported.[132] "To meet these conflicting requirements," Polaroid asserted, "US companies are often required to establish special packaging and relabeling facilities, and to design and manufacture multiple forms of packaging for different destination markets."[133] The Stanley Works also highlighted the costs associated with preparing separate packaging for domestic and exported products, stating:

> A packaging change alone, without considering the additional administrative costs associated with maintaining dual inventories, costs Stanley roughly $250 per stock keeping unit. That amount multiplied by the thousands of individual products made by Stanley graphically illustrates the steep, unnecessary costs of maintaining dual inventories.[134]

This theme was reiterated by 3M, which stated that:

> With regard to relabeling, 3M has in many cases chosen not to label its U.S. products with an origin mark (so that they can be sold in the United States without violating the Commission's standards), only to have to add a sticker indicating "Made in USA" to comply with a foreign country's marking requirement. The stickering not only increases costs and burdens on 3M, but also makes the 3M products look less physically attractive to the consumer.[135]

Furthermore, several commenters supporting the substantial transformation standard argued that adoption of this standard was in keeping with efforts of the United States and other countries, through the WTO and other means, to harmonize international marking standards. Thus, one commenter suggested that "because substantial transformation is the conceptual basis for emerging international origin standards, the Commission's adoption of this test would greatly aid international efforts to harmonize rules."[136]

Finally, a number of commenters argued that the substantial transformation standard serves to protect consumers. These commenters noted that the marking requirements applied by Customs were intended, like the Commission's policy, to ensure that consumers received accurate information about the origin of the products they purchased.[137] In addition, several commenters pointed out that, because the FTC and the Customs Service apply different tests, a "Made in USA" label had different meaning from one that said "Made in [foreign country]," and that this was likely to lead to considerable consumer confusion. Observed one commenter, "A reasonable buyer surely does not understand that a 'Made in U.S.A.' product must be all or virtually all U.S. content, while a product 'Made in Japan' may, on the other hand, have

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[120] AAEI, #187; Compaq, #62; USAIC, #24; IEMCA, #99, #189; IMRA, #46, #184; Stanley, #59, #194; JIG, #88, #196; Meeks, #105; 3M, #98, #198.

[121] IMRA, # 46, at 9–11.

[122] *E.g.*, Cynthia Van Renterghem for NEMA, Tr. at 268; James Clawson for JIG, Tr. at 389.

[123] *E.g.*, Meeks, #105, at 1; Polaroid, #90, at 3.

[124] Compaq, #62, at 3.

[125] Stanley, #59, at 8.

[126] WIMA, #133, at 5. *See also* Caterpillar, #104, at 2; Okidata, #42, at 1–2; Toshiba, #34, at 3.

[127] JIG, #88, at 3. *See also* JIG, #196, at 3; IECMA, #99, at 2, #189, at 3 (substantial transformation rule is understandable and usable, and there is a body of customs law and precedent for producers of virtually every product to follow).

[128] AAEI, #37, at 4. *See also* 3M, #98, at 11, 18 (stating that the NAFTA Marking Rules "provide a workable and objective standard" and that "[m]any U.S. manufacturers already are operating under the NAFTA and performing the required NAFTA Marking Rule analysis for their products." 3M, however, at the same time characterized the traditional case-by-case application of the Customs principle of substantial transformation as "too subjective.").

[129] WIMA, #133, at 2; Timkin/Torrington, #51, at 2. *See also* Stanley, #59, at 9.

[130] USAIC, #24, at 3.

[131] AAEI, #37, at 4–5.

[132] E.g., Caterpillar, #104, at 1–2; IEMCA, #189, at 5.

[133] Polaroid, #90, at 3. *See also* IEMCA, #99, at 2.

[134] Stanley, #59, at 6.

[135] 3M, #98, at 4.

[136] Watch Producers, #192, at 2. *See also* USAIC, #24, at 3 ("uniformity in country of origin rules will meet a stated objective of NAFTA and the GATT Uruguay Round Agreements").

[137] Compaq, #62, at 8; Okidata, #42, at 1–2; Stanley, #59, at 3–4; 3M, #98, at 13.

substantial content from other countries."[138] Similarly, another commenter argued:

A "Made in COUNTRY X" claim should represent the origin of the underlying product to consumers in a consistent manner, whether the relevant country is the United States or any other country. The long-standing Customs marking rule of origin, based on substantial transformation, applies to the country of origin markings on all imports. Consumers should not be faced with a conflicting origin rule for products marked "Made in USA."[139]

Several of these commenters also argued that the substantial transformation standard is consistent with consumer perception. One commenter, for example, suggested that substantial transformation "fits with general consumer perception that an article is *made* in the place where it takes on its final identity or is transformed into a new item."[140] 3M asserted that "consumers are concerned with the major elements of a product and its final place of manufacture. Consumers are not concerned with detailed accounting procedures and do not understand the significance of allocating general overhead expenses, etc."[141] Moreover, some commenters specifically pointed to the consumer survey evidence as supporting a similar view. For instance, IEMCA stated that:

While the results of various consumer surveys presented at the workshop failed to reveal a universal consumer attitude about the meaning of "Made in USA," at least one simple perception was evident: consumers feel that "Made in USA" means that the product was "made" domestically. Nothing in the survey results indicate that consumers typically understand this to mean that 100% of the content or labor that went into producing all components of the good was domestic. Rather, as elucidated by several participants in the workshop, consumers, by and large, view the "Made in * * *" language to indicate where the ultimate product "*came into being.*"[142]

2. Comments Opposing a Substantial Transformation Standard

At least 15 commenters specifically criticized a substantial transformation standard.[143] The most frequent criticism voiced was that the standard is too low and permits goods with significant foreign content to be labeled "Made in USA" because one step in the manufacturing process has been performed in the United States. The Footwear Distributors and Retailers of America maintained that using a substantial transformation standard, a manufacturer could claim that its shoes were made in the U.S. if the shoes were assembled using imported uppers and outsoles:

Under the rules promulgated by Customs, footwear assembled in Country B with an upper manufactured in Country A and an outsole manufactured in Country C would be labeled as a product of Country B, without qualification. By the same token, footwear assembled in this country using both imported uppers and outsole, need not be marked with a foreign country of origin.[144]

The Footwear Industries of America maintained that this problem extends across an array of products "because virtually any product could have a new name, character and use after its foreign components are finally assembled in the United States."[145]

Other commenters also argued that the substantial transformation standard fails to ensure that products claiming to be "Made in the USA" actually contain significant domestic content. The United Auto Workers, for example, point to Customs' practice of adding a value-added test to the substantial transformation standard in certain circumstances to illustrate the standard's limited domestic content requirement:

When there is a suspicion that the location of the transformation has been moved from one country to another to circumvent a trade law (*e.g.*, antidumping, subsidies), a test that requires additional value-added is applied. This demonstrates the minimal local value that is attached to the substantial transformation; its domestic content is very far from the FTC standard.[146]

A Bicycle Manufacturers Association representative observed that in some instances, simple assembly may be enough to constitute substantial transformation: "[A]t least in the case of bicycles, * * * the NAFTA marking rule basically says you take bicycle parts and assemble them together and make a bicycle, and you have done a substantial transformation."[147] Thus, while BMA did not oppose a substantial transformation standard, it urged the Commission to include a provision that would ensure the addition of significant domestic value.[148]

Some commenters opposed to the adoption of a substantial transformation standard contended that, contrary to the supporters' assertions, the substantial transformation standard does not apply objective criteria, nor does it afford predictability or consistency in administration.[149] An American Hand Tool Coalition representative, for example, stated that in Customs' January 1994 notice, Customs noted that "'the application of the [substantial transformation] rule involves considerable subjective judgments, that it's non-systematic, that the judicial and administrative decisions in one case have little bearing on another case.'" Accordingly, the American Hand Tool representative did not believe that a substantial transformation standard would "give the kind of consistency and guidance to business that most of the people around this table [at the workshop] are looking for."[150]

U.S. Representative Dingell maintained that the Commission's standard and Customs' rules serve different purposes and are thus not inconsistent with each other. He urged that the Commission "be guided by its statutory charter of prohibiting unfair or deceptive practices rather than focusing on the red herring argument made by certain companies that the FTC and Customs Service should use identical standards."[151] Several commenters agreed with this view, arguing that the

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[138] Watch Producers, #192, at 11.

[139] IEMCA, #189, at 3. *See also* JIG, #88, at 2 ("When a consumer buys a product labeled "Made in Japan," the consumer should have the same understanding of that product's origin as one labeled "Made in USA'."); USAIC, #24, at 3 ("It is not realistic to assume that consumers know or believe "Made in U.S.A." determinations are based on rules which differ from the rule for "Made in [Foreign Country]." With uniform rules, consumers will be able to make informed decisions about product origin without the confusion now associated with country of origin marking.").

[140] WIMA, #133, at 3 (emphasis in original).

[141] 3M, #98, at 24.

[142] IEMCA, #189, at 3 (emphasis in original).

[143] American Hand Tool, #91, #186; APRA, #30; Cranston, #38; Diamond Chain, #55; Dingell, #153; Estwing, #179; FDRA, #27, #172; FIA, #52, #177; New Balance, #44, #197; RPFMA, #178; Summitville, #162; Tileworks, #156; UAW, #93, #174; Vaughan & Bushnell, #191; Welbend, #190. In addition, although the coalition of state Attorneys General did not specifically address substantial transformation in their written comments, the coalition's representative at the public workshop did voice his concerns about the substantial transformation standard during the proceedings. *See, e.g.*, Roger Reynolds for AGs, Tr. at 434. Some commenters opposed a "pure" form of substantial transformation such as used by Customs (indicating that in some circumstances such a standard might not ensure that sufficient work was performed in the United States), but suggested that a modified version could be acceptable. *E.g.*, EIA, #84, at 6. #193; BMA, #195.

[144] FDRA, #27, at 3. *See also id.*, #172, at 4–5.

[145] FIA, #177, at 6. *See also id.*, #52, at 4.

[146] UAW, #93, at 3–4.

[147] Michael Kershow for BMA, Tr. at 187.

[148] BMA, #195, at 3.

[149] E.g., FIA, #52, at 5.

[150] Jeanne Archibald for American Home Tool, Tr. at 373–74. *See also* Lauren Howard for FIA, Tr. at 377 (substantial transformation standard will not give manufacturers clear guidance).

[151] Dingell, #153, at 2. *See also* Jeanne Archibald for American Hand Tool, Tr. at 270; American Hand Tool, #91, at 4–5, #186, at 4, 34; UAW, #174, at 3; Dynacraft, #45, at 4–5, #173, at 4; Diamond Chain, #55, at 3. Similarly, according to one workshop participant, substantial transformation is based on manufacturing processes rather than on consumer perception. Jeanne Archibald for American Hand Tool, Tr. at 373–374.

Commission's current policy protects consumers from deception.[152]

Commenters opposed to the adoption of a substantial transformation standard further argued that application of the standard would result in labeling contrary to most consumers' understanding of the phrase "Made in USA." American Hand Tool asserted that in the surveys that were presented at the FTC's workshop, no respondents indicated that "Made in the USA" meant that the product had undergone substantial transformation or tariff shift in the U.S., or even suggested it meant creating a distinct article from something else:

> Such a concept would require consumers to distinguish among various manufacturing processes and to identify the point at which the final product came into being. But the consumer perception evidence demonstrates the opposite: consumers view "Made in the USA" as applying to all of the materials and labor used to make a product and do not distinguish among manufacturing steps or processes.[153]

Noting that the consumer survey presented at the FTC public workshop found that the majority of consumers would not agree with a "Made in USA" label on a product with 50% foreign content, the same commenter stated that use of the substantial transformation standard would result in "deceiving a fairly large segment of the U.S. public."[154] Another workshop participant observed: "I don't see any relation of the substantial transformation test to consumer perception."[155]

Finally, the American Hand Tool Coalition questioned whether using a substantial transformation standard would in fact harmonize the Commission's standard with other U.S. and international standards. The Coalition maintained that several of the proponents of a substantial transformation standard in the Commission's proceeding actually advocated adopting various modifications to the substantial transformation standard as applied by the Customs Service. Adopting such variations, the American Hand Tool Coalition maintained, would not achieve harmonization with the Customs Service. Moreover, a unified Customs/Commission standard would nevertheless be inconsistent with the Buy American Act.[156]

[152] APRA, #30, at 6; Cranston, #38, at 2; Diamond Chain, #55, at 3.

[153] American Hand Tool, #186, at 31.

[154] Jeanne Archibald for American Hand Tool, Tr. at 373.

[155] Roger Reynolds for AGs, Tr. at 434.

[156] American Hand Tool, #186, at 34.

E. Comments Supporting Other Standards

In addition to the three primary alternatives discussed above, a number of commenters suggested other possible approaches to the evaluation of U.S. origin claims.[157] For example, some commenters suggested that a "Made in USA" standard should focus on the production of "major" or "essential" components. The Footwear Distributors and Retailers of America, for example, suggested that the Commission adopt a standard that permits the use of a "Made in USA" label when the "major component production" and final assembly takes place in the United States.[158] Similarly, Manchester Trade Ltd. argued that products whose "essential elements" are produced and assembled in the United States should be allowed to carry an unqualified "Made in USA" label.[159]

The National Electrical Manufacturers Association supported a similar standard. It asserted that, at least for electronic products, the standard for making an unqualified U.S. origin claim should focus on whether the product is "manufactured primarily" in the United States. Specifically, if an American electronics producer uses primarily U.S.-built subassemblies and performs the remaining steps in the United States, the product should be eligible for a "Made in USA" label, regardless of the source of the basic electronic and mechanical components.[160] According to the National Electrical Manufacturers Association, this standard "more fairly acknowledges that the source of electrical products' greatest cost, value, and essence is found at the subassembly level rather than the basic component level."[161]

Other commenters, most notably two trade associations of automobile manufacturers, specifically objected to any bright-line test for determining whether a seller can make a U.S. origin claim and instead advocated the use of a case-by-case approach.[162] The American Automobile Manufacturers Association, for example, stated that consumers' understanding of "Made in USA" claims varies greatly from product to product, and that this understanding continues to evolve. Accordingly, it urged the Commission to avoid setting rigid standards that may become obsolete or cause consumer confusion, and recommended that the Commission apply well-established principles of advertising law, considering the express and reasonably implied meaning of the claim, the materiality to consumers of the claim, and whether the advertiser has a reasonable basis to make the claim.[163] The Association of International Automobile Manufacturers similarly asserted that a "one-size-fits-all standard" would be confusing, and that it may be impossible to develop a standard that can accurately reflect consumer views about all products. It therefore suggested that, at least for automobiles, the Commission adopt a case-by-case approach that reviews specific advertising claims and the meaning of those claims to consumers.[164]

[157] As noted above, *see supra* note 37, there were also approximately 15 commenters who opposed the current "all or virtually all" standard, but who did not specify a preferred alternative standard. In addition, there were approximately 33 other commenters (including approximately 18 consumer commenters) whose comments did not clearly indicate any preferred standard.

[158] FDRA, #27, at 2, #172, at 4.

[159] Manchester Trade Ltd. ("Manchester Trade"), #21, at 2. *See also* Federation of the Swiss Watch Industry ("FSWI"), #47 (FTC should adopt a standard that recognizes the relative importance of the different parts of a product, such as the importance of the movement and the casing of a watch). *But see* Jim Clawson for JIG, Tr. at 513–514 (discouraging the Commission from adopting a standard based on essential components because of the difficulty of determining which components of a product are essential, and because such a standard may discourage the use of American materials).

[160] NEMA, #102, at 2. *See also* EIA, #84, at 1–2 (similarly advocating that "if a U.S. electronics producer uses primarily U.S.-built subassemblies and performs the remaining manufacturing steps in the U.S., that product should be eligible for a 'Made in USA' label, whatever the source of the basic electronic and mechanical components").

[161] NEMA, #102, at 2. In NEMA's post-workshop comment, however, it contended tha tthe Commission shoud defer to the substantial transformation standard for industrial products, or alternatively, exclude industrial products "from anyrule directed to 'Made in USA' claims." *Id*, #182, at 2–3.

[162] Association of International Automobile Manufacturers ("AIAM"), #101, at 2, #180, at 1. *See also* Toyota, #26, at 2 (suggesting that, with respect to the automotive industry, the Commission should adopt a traditional reasonable basis standard for measuring domestic content, rather than a precise formula); AAF, #100, at 2, 5 (urging the Commission to "avoid establishing a bright line definition of '"Made in USA"' and instead adopt "a flexible standard whereby a manufacturer has the ability to make specific, qualified and substantiated claims about a product").

[163] American Automobile Manufacturers Associations ("AAMA"), #103, at 2.

[164] AIAM, #101, at 4, #180 at 1–2. Another approach suggested was to include a grading scale from A+ to F, depending on percentage of U.S. content. Tech Team, Inc. ("Tech Team"), #307. The Federation of the Swiss Watch Industry advocated that the FTC adopt a standard for "Made in USA" designations similar to Switzerland's "Swiss Made" rule for watches. It said this rule provides that the watch must contain a Swiss movement (defined as one in which 50% of the value of the parts are of Swiss manufacture and which is assembled and inspected in Switzerland), the movement must have been encased in Switzerland, and the watch must

Continued

F. Guidelines Proposed By the Ad Hoc Group

After the workshop, a group of several companies and industry associations calling themselves the "Ad Hoc Group" jointly submitted as a post-workshop comment proposed "Guidelines for Making U.S. Origin Advertising and/or Labeling Claims" ("Ad Hoc Guidelines").[165] Central to the Ad Hoc Guidelines are three proposed safe harbors for making an unqualified "Made in USA" claim. Specifically, the Ad Hoc Guidelines provide that "a product that contains materials, parts or components that are not wholly obtained in the United States can be non-deceptively advertised or labeled 'Made in USA'" if one of three conditions is met:

(1) the last significant manufacturing process or processes, which must be more significant than simple assembly or minor processing, occur in the United States, and the cost of U.S. processing is at least 50% of the cost of goods sold; or

(2) (i) a majority of all the processing that is normally undertaken to produce a product takes place in the U.S.;

(ii) such process(es) result in the creation of a new article of commerce that has a different name, character, and use than the materials, parts, or components from which it is made; and

(iii) such process(es) when taken together, are more significant than simple assembly or minor processing and result in a ratio of the cost of U.S. processing to the cost of goods sold that is not insignificant; or

(3) the good satisfies a modified version of the NAFTA Preference Rules.

In addition, the Ad Hoc Guidelines propose establishing a second tier of U.S. origin claims. Specifically, a product could be labeled "*Wholly* made in the U.S." (emphasis added) if "all or virtually all of the processing, materials, components, and labor used in the production of product are of U.S. origin."

Some of the signatories to the Ad Hoc Guidelines also submitted separate comments emphasizing their support for the Ad Hoc Guidelines. The American Association of Exporters and Importers explained that the Guidelines attempt to provide American manufacturers with reasonable and easily understandable alternative methods for claiming that their products are "Made in USA."[166] The Bicycle Manufacturers Association asserted that "consumers are entitled to expect that a claim that a product was 'Made in USA' means not only—but most fundamentally—that the product came into being (*i.e.*, was substantially transformed) here, but that *substantial value* was added in the U.S. * * * [E]ach of the three 'safe harbors' acknowledge this principle * * * "[167] Similarly, the International Mass Retail Association asserted that, in rejecting both a simple value-added standard as well as a simple adoption of Customs' substantial transformation standard, the Ad Hoc Guidelines "get to the plain idea of what it takes to 'make' something"; accordingly, the proposal provides guidance to advertisers and avoids consumer deception.[168] The Association of Home Appliance Manufacturers also submitted a separate comment endorsing the Guidelines and reiterating its support for the NAFTA Preference Rules as one of the three safe harbors for making a "Made in USA" claim.[169]

Other signatories to the Ad Hoc Guidelines submitted separate comments suggesting modifications to the proposal. 3M expressed its support for the Ad Hoc Guidelines, but suggested two additional safe harbors: (1) that goods be allowed to be labeled "Made in USA" if they are substantially transformed in the United States;[170] or alternatively, (2) that a lesser mark such as "Country of Origin: USA" or "Product of the US" (rather than "Made in USA") be permitted when a product is sufficiently manufactured in the United States to become a U.S. product for international customs purposes (*i.e.*, is substantially transformed in the U.S.), but would not meet the standard for an unqualified "Made in USA" claim.[171] Under 3M's proposal, to bear the lesser mark: (1) the product would have to be actually sold in the market that requires the label; (2) the label would have to be no larger than is necessary to meet foreign labeling requirements; and (3) the claim could not be repeated in U.S. advertising unless it could meet the Ad Hoc Guidelines' safe harbors for unqualified "Made in USA" claims.[172]

New Balance and Footwear Industries of America, although not signatories to the Ad Hoc Guidelines, expressed general support for them, but asserted that any safe harbor for making unqualified "Made in USA" claims should require that a product have over 50% domestic value.[173] According to New Balance, without this requirement, products with low domestic content that undergo only final assembly in the United States could be labeled "Made in USA" in some instances, and in those instances, the label would be deceptive.[174]

In contrast, the American Hand Tool Coalition, and two of its member companies, submitted comments strongly objecting to the Ad Hoc Guidelines. The American Hand Tool Coalition asserted that the Ad Hoc Guidelines are a "conglomeration of vague and potentially unequal tests that would promote rather than prevent consumer deception."[175] Among its specific criticism of the Ad Hoc Guidelines were: (1) by permitting products with 50% or even more foreign content to be labeled "Made in USA," the Ad Hoc Guidelines would deceive a substantial percentage of consumers;[176] (2) the two-tiered approach of "Made in USA" and "wholly Made in USA" would lead to consumer confusion and make it difficult for companies that meet the higher standard to distinguish their products;[177] and (3) the proposed Guidelines would not achieve harmonization with other U.S. or foreign government standards.[178]

IV. Analysis: General Considerations

The comments submitted to the Commission, as well as the Commission's independent analysis, suggest a number of factors to be considered in seeking an appropriate standard for evaluating U.S. origin claims. The Commission considered consumer perception of such claims, consistency of the Commission's standard with other, existing standards,

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have undergone final inspection in Switzerland. FSWI, #47, at 4–5.

[165] Ad Hoc Group, #183. The proposal was signed by AAEI, the Association of Home Appliance Manufacturers ("AHAM"), the Automotive Parts and Accessories Association ("APAA"), AWPA, BMA, EIA, IMRA, 3M, and Stanley.

[166] AAEI, #187, at 2.

[167] BMA, #195, at 3.

[168] #184, at 1–4.

[169] AHAM, #188, at 1–2.

[170] *See also* AAEI, #187, at 3; EIA, #193, at 8.

[171] 3M, #198, at 1–2.

[172] *See also* IMRA, #184, at 7 (should allow manufacturers to mark products sold in the U.S. with the words "Country of origin: USA" in limited instances where actual exports of the product are subject to foreign marking requirements); EIA, #193, at 2 (the Commission could prevent consumer deception through education concerning the limited meaning of such marking and through prohibition on U.S.-origin claims to consumers); JIG, #196, at 3–4 (should the FTC decide that the substantial transformation standard is not appropriate, advocates establishing a "safe harbor" that would allow companies to provide consumers with country-of-origin information that also satisfies international origin marking rules).

[173] New Balance, #197, at 2; FIa, #177, at 6–7.

[174] New Balance, #197, at 4.

[175] American Hand Tool, #186, Appendix A, at 1.

[176] *Id.* at 1, 4–6.

[177] *Id.* at 7–8. See also Vaughan & Bushnell, #191, at 2; Estwing, #179, at 2 ("Only the most vigilant consumers would notice the difference between the two claims, and even if the distinctions were noticed, consumers would have no basis by which to discern the different meanings of the two phrases. Consumers are likely to assume that [both claims] refer to all or virtually all domestic origin * * *").

[178] American Hand Tool, #186, Appendix A, at 8–0.

and practical issues of implementation. This notice discusses each in turn.

A. Consumer Perception

1. Studies and Findings

As noted above, Commission staff commissioned a consumer perception study [179] as part of the FTC's overall review of U.S. origin claims in advertising and labeling. In addition, some commenters responded to the Commission's request for further consumer perception evidence by submitting data of their own.[180]

The FTC staff-commissioned study consisted of two parts. The first part ("1995 FTC Copy Test") was a traditional copy test in which subjects were shown advertisements containing one of five qualified or unqualified U.S. origin claims (*e.g.*, "Made in USA," "70% Made in USA," "Made in U.S. of U.S. and imported parts") and asked a series of questions about what they understood each claim to mean. The second part of the Commission's study was termed an attitude survey ("1995 FTC Attitude Survey"). It presented subjects with a series of scenarios in which the percentage of a product's cost that was U.S. in origin varied; in addition, subjects were either told that the product was assembled in the U.S., told that it was assembled abroad or not told the site of assembly. Subjects were then asked whether or not they agreed with a label stating that the product was "Made in USA." [181] In addition to the results of the new study commissioned for this review, the results of a 1991 FTC study ("1991 FTC Copy Test") also were considered.[182] This 1991 consumer perception study asked consumers general questions about "Made in USA" claims, as well as questions about the use of such claims in specific advertisements.

In addition to the Commission's studies, at least six other commenters provided consumer perception data on U.S. origin claims, including: New Balance Athletic Shoe (New Balance), the International Mass Retail Association (IMRA), the American Hand Tool Coalition (American Hand Tool), Crafted With Pride in U.S.A. Council, Inc. (Crafted with Pride), BGE Ltd. (BGE), and the National Consumers League (NCL).[183] The studies addressed a number of topics related to U.S. origin claims and found a range of results. The most significant findings are discussed below.

a. Importance of U.S. origin in purchasing decisions. All of the studies looked in one way or another at how important a "Made in USA" designation was to consumers. Several of the studies found that many consumers express a preference for U.S.-made goods. For example, when respondents to the 1991 FTC Copy Test were asked to circle things in an ad that were important to them, 52% of those shown a typewriter ad and 33% of those shown a bicycle ad circled the "Made in USA" logo. Similarly, American Hand Tool survey participants considered a "Made in USA" label to be a highly important factor when buying hand tools. On average, this label was considered as important as price and more important than brand name and reputation of store (but was seen as less important than the warranty). Crafted With Pride submitted the results of several studies, all of which indicated that consumers have a significant preference for items made in the USA.[184] For example, in one test conducted in retail stores, sales of U.S.-made apparel increased 24% when the items were affixed with hangtags prominently identifying them as "Made in USA." [185] Finally, 84% of respondents in the NCL study said they were more likely to buy an item that was made in the USA than a foreign-made product, assuming that price and other features of the product were identical.

On the other hand, three other studies suggested that country of origin is not as important to consumers as some other product features, such as price, design, and style. When asked an open-ended question as to what factors they considered in deciding which brand of athletic shoes to buy, no respondents to the New Balance survey mentioned the country of origin of the shoes' components. Country of origin was ranked by respondents in that survey below comfort and fit, durability, design/style, and price in factors they considered in their athletic shoe purchasing decisions. Similarly, in the BGE survey, only 26% of participants indicated that they would base their decision about whether to buy a collectible plate on the country in which it was manufactured. In contrast, 99% said the primary reason for buying such a plate was because of the art on it. IMRA submitted poll data suggesting that although consumers say they prefer buying products made in the USA, this preference noticeably declines if an American-made good is more expensive than a foreign-made good. IMRA's data also indicated that a product's country of origin rated well below a product's warranty, price, and other product features in importance to purchasing decisions. In addition, the survey submitted by IMRA showed that people care more about the country of origin for certain products, such as cars, clothing, and electronics, than for other products, such as tools, shoes and large appliances.

Consumer responses to the 1995 FTC Copy Test and 1995 FTC Attitude Survey reflect a range of views about the importance to consumers of purchasing products that are made in the USA. Participants in the Copy Test were asked "When you are considering buying a [product], how important is it to you that the item be made in the USA?" On a scale of 0–10, 0 being not at all important and 10 being very important, 39% of participants responded in the 8–10 range; 39% of participants responded in the 3–7 range; 22% of participants responded in the 0–2 range. The importance participants placed on buying a product that was produced in the U.S. did not vary among the copy test products (a stereo, coffee maker or pen).

The results of the 1995 FTC Attitude Survey were similar, although participants in the Attitude Survey rated the importance of buying a pen that was "Made in USA" somewhat higher than the importance of buying a stereo that was made in the USA. Just under 50% of participants who were asked about pens rated the importance of buying a pen that was "Made in the USA" between 8–10. Less than 20% put the importance between 0–2. For participants who were asked about stereos, approximately 35% rated the importance of buying a stereo that was

[179] Document No. B212883 on the Commission's public record.

[180] IMRA, Document No. B212895; Crafted with Pride, Document No. B212908; American Hand Tool (Danaher Tool Group), Document No. B212910; New Balance, Document No. B212922; National Consumers League, Document No. B212934; BGE, Document No. B212946.

[181] For example, a typical question in the 1995 FTC Attitude Survey read:

This stereo is assembled in the United States using U.S. and foreign parts. The foreign parts account for 10% of the total cost of making the stereo. The U.S. parts and U.S. assembly together account for 90% of the total cost. If this product had a label stating that the product was "Made in the USA," how much would you agree or disagree with the label? Would you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, or strongly disagree?

A respondent would then be presented with the same scenario, except that 30% of the cost was foreign and 70% U.S., then with a scenario in which U.S. and foreign costs each accounted for 50% of the total costs, and so on.

[182] Document No. B213001.

[183] The NCL study consisted of mail-in survey of its membership and did not purport to be a scientifically valid survey. Nonetheless, it is included in this discussion for informational purposes.

[184] Crafted With Pride, #35, at 3–7, Exhibits 1–7; #176, at 2–3.

[185] *Id.*, #35, at 6, Exhibit 7.

Made in the USA between 8–10, while just over 25% put the importance between 0–2.

Several of the studies found that consumers associate "Made in USA" claims with positive economic consequences for the United States, such as more jobs for Americans. For example, in the New Balance study, when respondents were asked "What does Made in USA mean to you," 35% of respondents stated that a "Made in USA" label implied jobs or work for U.S. citizens. In the Commission's 1991 Copy Test, when respondents were shown a card with "Made in USA" on it and asked what they think of when they see this on a product, the largest number of respondents (27%) mentioned that "Made in USA" means jobs or employment, gave responses focused on keeping dollars in the United States, or gave other answers relating to the U.S. economy. Similarly, in the American Hand Tool study, among 443 respondents who said that a majority of their hand tools are American made, the largest percentage (41%) stated that they buy American products to support the U.S. economy and U.S. labor.

On the other hand, Crafted With Pride concluded that people check country of origin for quality reasons, not because of abstract political or social concerns; most think U.S. companies make better clothing, appliances, telephones. Like Crafted With Pride, IMRA concluded that people who base their purchasing decisions on a "Made in USA" label do so because such a label represents better quality than foreign produced goods, not because of patriotic sentiment.

b. Consumer understanding of "Made in USA" i. General meaning. Several studies indicate that when asked to define "Made in USA," consumers do so in only the most general terms. Most commonly, when asked the meaning of "Made in USA," study participants stated that a product was "Made in the USA" with no elaboration. For example, in the New Balance study, when consumers were asked "What does 'Made in USA' mean to you," the highest percentage of respondents (40%) stated some version of "Made/Manufactured in US." Similarly, American Hand Tool found that when respondents were asked what a "Made in USA" label would mean if they were considering buying a hand tool, the largest percentage of respondents (46%) simply stated it would mean the tool was "Made in the U.S."

The Commission found similar results. In the 1995 FTC Copy Test, when respondents were asked what a "Made in USA" claim means in an advertisement or label, 63.5% gave answers indicating the product was made in the U.S. without further elaboration. Similarly, in the 1995 FTC Attitude Survey, 60.8% of respondents stated that a "Made in the USA" label means "Made in US."

ii. How much is made in the United States. In looking at *how much* of a product that is labeled "Made in USA" consumers believe is made in the United States, the answer appears to depend in part on how the question is asked. As noted above, when asked the general, open-ended question what does "Made in USA" mean, most consumers simply answer "Made in USA." In the 1995 FTC Copy Test, for example, when asked what a "Made in USA" statement in an ad or label meant, only 5% of respondents answered "all made in US."

Where studies, however, directly asked consumers how much of a product marked "Made in USA" was made in the United States, or presented them with scenarios that posited a level of U.S. content, many respondents indicated that they view "Made in USA" claims as representing that products possess a high amount of U.S. content. This result, for example, was reflected in two of the Commission studies. The 1995 FTC Attitude Survey found that the number of consumers who were willing to accept a "Made in USA" label on a product decreased significantly as the amount of production costs incurred abroad increased. For example, while 52% of respondents agreed with a "Made in USA" label when foreign production accounted for 30% of total production costs, only 28% of respondents were willing to accept a "Made in USA" label when foreign production accounted for 50% of total production costs.[186] In the 1991 FTC Copy Test, approximately 77% of consumers stated that "Made in USA" references mean that all or almost all of a product was made in the USA.[187]

PERCENTAGE OF RESPONDENTS WHO AGREED AND DISAGREED WITH A "MADE IN USA" LABEL

Total cost	Assembled in U.S.		Country of assembly unspecified		Assembled in foreign country	
	Agree	Disagree	Agree	Disagree	Agree	Disagree
90% US/10% Foreign	75.0%	22.0%	63.9%	31.5%	54.6%	33.3%
70% US/30% Foreign	67.0%	31.0%	50.9%	43.5%	38.9%	50.0%
50% US/50% Foreign	36.0%	46.0%	28.7%	57.4%	18.5%	63.9%
30% US/70% Foreign	25.0%	68.0%	20.4%	72.2%	10.2%	83.3%
10% US/90% Foreign	20.0%	74.0%	19.4%	74.1%	10.2%	84.3%

Other studies found similar results. American Hand Tool asked respondents what percentage of a hand tool they assumed was made in the U.S. Fifty-three percent of the respondents stated 100%. An additional 27% gave responses between 50% and 99%. Similarly, in the NCL study, consumers were asked "When you see a product advertisement or label stating "Made in USA," what amount of U.S. parts (i.e., components) do you assume is in the product?" Forty-five percent of respondents stated 100%; an additional 9% of the respondents stated a minimum ranging between 90% and 100%. When respondents to this survey were asked about the minimum amount of U.S. labor they assume is in the product, 58% stated 100%, and an additional eight percent stated a minimum between 90% and 100%.

iii. Importance of U.S. assembly. When participants in the 1995 FTC Copy Test were asked whether a "Made in USA" statement in an ad or on a package suggested or implied anything

[186] These figures are for responses across all sites of assembly, *i.e.*, whether the respondent was told that the product was assembled in the U.S., assembled in a foreign country, or not told the site of assembly. More complete results of the 1995 Attitude Survey appear in the chart below.

[187] In response to a follow-up question, approximately 82% of these respondents specified that this was both parts and labor. Thus, a total of approximately 63% of the respondents to the 1991 FTC Copy Test stated that a "Made in USA" claim meant the product was all or almost all made in the United States and that this meant both parts and labor.

about where the product was assembled, only 50% of the respondents answered affirmatively. The responses of the participants in to the 1995 FTC Attitude Survey, however, suggest that the site of assembly makes a significant difference to consumers in deciding whether a product is "Made in USA." Specifically, respondents in the 1995 FTC Attitude Survey were considerably more willing to agree with a "Made in the USA" label on products that were assembled in the United States than on products assembled abroad, regardless of the overall percentage of the product that was made in the United States. For example, even if a foreign-assembled product contained U.S.-made parts that accounted for 90% of the product's total cost, only 55% of respondents were willing to agree with a "Made in the USA" label on the product. By contrast, when respondents were asked about the same 90% U.S. content product and told that it was assembled in the United States, 75% were willing to agree with a "Made in USA" label on the product.

2. Conclusions

The Commission received considerable information concerning consumer perception of U.S. origin claims and has found this information useful in its consideration of this matter. Although there are necessarily limitations on the inferences that can be drawn, the Commission believes that the following conclusions are supported by the evidence.

First, the studies cited by the commenters indicate that U.S. origin claims are material to many consumers. A large number of consumers expressed an interest in or preference for U.S.-made goods, even if they did not always follow this interest through when actually purchasing items. A consumer's purchasing decision is, of course, often influenced by other factors, such as fit and price; it is not sensible to expect consumers to buy shoes that do not fit or that cost more than they can afford simply because those products are labeled "Made in USA." Nonetheless, all other things being equal, many consumers express a preference for U.S.-made products. That U.S. origin claims are material to consumers is reinforced by the considerable interest of manufacturers in making these claims. Many of the comments received also indicate that a "Made in USA" label is a valuable marketing tool.

Second, the consumer perception data indicate that many consumers may have only a general sense of what the phrase "Made in USA" means rather than a highly refined view of how "Made in USA" should be interpreted, i.e., whether a "Made in USA" claim should be evaluated in terms of costs, processing, or in another manner. Several commenters, both at the workshop and in post-workshop comments, opined that consumers' failure to specifically mention anything about cost or parts when asked generally what "Made in USA" means shows that these consumers interpret a "Made in USA" claim as meaning only that the product "came into being" in the United States. One commenter said, for example:

> [A]pproximately 65 percent of the [FTC] copy test respondents either repeated the "Made in USA" phrase or responded with a virtually identical phrase when queried about the meaning of "Made in USA." Since such consumers are likely to use the word 'made' according to its dictionary definition, the copy test results show that consumers perceive a product as being created in this country if the materials are either formed or modified, or the component parts are put together in the United States. [188]

Similarly, another commenter suggested that the "overwhelming response of consumers was not that ['Made in USA'] means X percent parts or labor, but rather that it means simply that the product was made, built, manufactured, created in America." [189] And a third commenter argued that "[T]he empirical evidence suggests that consumers conceptualize 'Made in USA' claims in terms of the process by which parts or materials are transformed into a 'new and different' finished product—' that is, substantial transformed.'" [190]

The Commission, however, does not believe that this complex interpretation is supported by the available evidence. It is likely reading too much into a consumer's tautological statement that "Made in USA" means "Made in USA" to say that it demonstrates that consumers understand "Made in USA" to mean that a product "came into being" in the United States and not to mean anything about where the product's parts were made. A simpler explanation is that many consumers are likely unaware that there are various alternative constructs for evaluating "Made in USA" claims and may not articulate a precise definition of "Made in USA." [191] In other words, it may not have occurred to many of the survey respondents that there are multiple ways of defining the commonly used, short-hand phrase "Made in USA."

Moreover, the view that a product is made where it "comes into being," regardless of the origin of a product's parts, is contradicted by at least some evidence that many consumers do consider parts to be an important element of the "Made in USA" definition. In the 1991 FTC Copy Test, for example, when the respondents who stated that "Made in USA" means that "all or nearly all" of a product was made in the United States were asked "Is that parts, labor, or both parts and labor?," 77% of respondents answered both parts and labor. The American Hand Tool Coalition's study found similar results, with 38% of respondents saying the claim referred mostly to materials, 38% saying it pertained mostly to labor, and 40% saying both parts and labor (even though the latter response was not expressly given as an option). In addition, in the 1995 FTC Attitude Survey, most respondents disagreed with a "Made in USA" label for products that underwent final assembly in the United States but had low overall U.S. content, suggesting that merely "coming into being" in the United States does not satisfy consumers' understanding of the term "Made in USA." [192]

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[188] FIA, #177, at 2.

[189] FIA, #193, at 5.

[190] BMA, #194, at 4.

[191] *See* UAW, #174, at 2 ("The consumer survey data provides little useful information regarding the understanding of most consumers of the term 'Made in USA.' One conclusion that could be drawn from the data is that very few consumers know enough about the process of production to be able to evaluate different claims about parts content or product fabrication.").

[192] On the other hand, only 28% of respondents to the 1995 FTC Copy Test answered "yes" when asked if a "Made in USA" claim suggested or implied anything about where the parts that went into a product were manufactured. Some commenters, including the Bicycle Manufacturers Association, cited this statistic as support for the argument that consumers do not think of "Made in USA" claims in terms of parts. BMA, #195, Appendix at 6. Interestingly, only about half of the respondents to the 1995 FTC Copy Test stated that "Made in USA" suggests or implies anything about where the product was *assembled* either (a concept presumably closer to "coming into being"). In fact, a considerable number of respondents (34%) to this copy test were unwilling to say that a "Made in USA" claims suggests or implies anything about where a product was assembled *or* where its parts came from or how much of the total cost was U.S., making it hard to infer exactly what these respondents believe "Made in USA" does mean. One possible explanation is that consumers do not believe that any of the factors asked about—site of assembly, origin of parts, some level of U.S. costs—are *necessarily* required for a product to be called "Made in USA," although any or all of them may be required in a particular (or even most) instances. Thus, when asked whether a "Made in USA" representation suggests or implies where the parts are made, a nay-saying participant may have answered, in essence, "not necessarily."

Yet another possible interpretation is that the relatively low number of respondents responding affirmatively to the question of whether a "Made in USA" claims suggests or implies anything about where the parts are made is the result of the conservative phrasing of the question. Pointed to a "Made in USA" statement and asked whether it

Continued

Third, whether or not consumers are able to precisely define "Made in USA," the consumer perception studies indicate that, when given the opportunity, consumers nonetheless fairly consistently suggest that products labeled "Made in USA" are expected to have a high degree of U.S. content. When asked what portion of a product labeled "Made in USA" was made in the United States, many respondents say that the claim means that all of a product is U.S.-made. When presented with specific scenarios, many consumers similarly indicated that they expected a product to have a high level of U.S. content, although they also indicated they were willing to accept a product labeled "Made in USA" even if it had some foreign content. For example, in the 1995 FTC Attitude Survey, 67% of respondents agreed with a "Made in USA" label when the product was assembled in the United States and U.S. production accounted for 70%, and foreign content, 30%, of the total production cost. Even with U.S. assembly, however, consumers appear to require significant U.S. content to justify a "Made in USA" label. Thus, the number of respondents agreeing with a "Made in USA" label in the same study drops off significantly—to 36%—when U.S. content drops to 50%, even where the product is assembled in the United States.[193] Only New Balance found that a majority of consumers were willing to accept a "Made in USA" label when a product was made with 50% U.S. materials and components.[194]

The Commission accepts the argument of several commenters that consumers increasingly recognize that products are made globally. The multitude of foreign origin labels on products likely reinforces consumers' increased awareness of foreign sourcing. That consumers may recognize that many products are no longer wholly made in the United States, however, does not necessarily indicate that consumers expect that *products labeled "Made in USA"* have significantly less U.S. content. It appears at least equally likely that the commenters are correct who argued that knowledge of increased globalization of production makes high U.S. content more, not less, important to consumers.

Finally, although there may in fact be differences in the way consumers interpret and understand U.S. origin claims for different types of products, the data currently before the Commission appear too limited to draw any conclusions on this subject.[195]

B. Consistency With Other Statutory and Regulatory Requirements

Many of the corporations and trade associations that commented as well as some of the Congressional comments strongly urged the Commission to adopt a standard that is consistent with one of the other, already existing legal standards, such as the substantial transformation test applied by the Customs Service, standards employed by foreign governments, the Buy American Act, or NAFTA preference rules. The Commission recognizes that there are often considerable benefits to harmonizing its standards with those of other government agencies, including decreased burdens on business and additional clarity for consumers. Thus, wherever possible and appropriate, the Commission strives to ensure that its standards are consistent with those of other agencies. To this end, Commission staff has consulted with staff of other federal agencies as part of this review, including staff of the U.S. Customs Service.

Nonetheless, there are certain limitations on the possibility of full harmonization in this area and there are costs to be weighed against the benefits of harmonization. In addition, it is not, of course, possible to be consistent with each of the cited standards, as they are not consistent with each other. Issues raised by the adoption of each of the referenced standards are addressed in turn.

1. Consistency With the Standards of the U.S. Customs Service

Under the current legal regime, there is in fact no direct conflict between Customs Service and FTC requirements. This is because, on product labels, the Customs Service regulates only markings of foreign origin, while the Commission is concerned primarily with claims of U.S. origin. Nonetheless, the Commission recognizes that a certain tension arises from the use of different standards by the Customs Service and by the FTC. In particular, there are two ways in which an appearance of inconsistency may be conveyed. First, although a product is deemed, under Customs Service regulations, not to be of foreign origin (because it has been or will be substantially transformed in the United States) and so is not required to be marked with a foreign country of origin, it may not necessarily qualify to be labeled "Made in USA" under the Commission's analysis.[196] Second, a foreign origin marking (such as "Made in Japan") may reflect a different level of processing in that country than would a U.S. origin claim ("Made in USA") on a similar item.

The standards currently applied by the FTC and the Customs Service derive from their respective governing statutes, and the differing purposes of these statutes impose certain limits on harmonization between the two. Section 5 of the FTC Act is designed primarily to protect consumers and to ensure that voluntary advertising and labeling claims, including claims of U.S. origin, are not deceptive. The Customs laws, by contrast, address a range of purposes, including the establishment of tariffs and quotas and the prevention of dumping. While the specific requirement in the Tariff Act that every imported good be marked with its country of origin does indeed spring from the consumer-friendly goal of providing information to the "ultimate purchaser," the standard actually employed to determine which country is the country of origin " substantial transformation " is used not only for this purpose but also for many others. Thus, there is little indication that the standard itself is based on consumer understanding. Indeed, as discussed above, substantial transformation (characterized by some commenters as equivalent to where a product "came into being") is not necessarily consistent with consumer perception. In addition, the fact that Customs' marking rules are mandatory and universal may, to some extent, dictate the form those rules take.

Another consideration in attempting to harmonize the FTC's standard with

says anything about where the parts of the product are manufactured, consumers may well respond that, no, literally it does not.

[193] Interestingly, the drop between 70% U.S. content and 50% U.S. content is the largest drop between levels whether respondents were presented with scenarios in ascending order (*i.e.*, proceeding from 10% U.S. content to 90% U.S. content) or in descending order (*i.e.*, proceeding from 90% U.S. content to 10% U.S. content).

[194] New Balance did not present consumers with any scenarios in which a product was made with an amount of U.S. content between 50 and 100 percent.

[195] Nonetheless, to the extent marketers may in the future develop competent and reliable evidence that consumer perception varies among products, this evidence could be relevant to establishing a reasonable basis for their specific U.S. origin claims.

[196] Many of the commenters appeared to have overlooked other Commission precedent that has historically applied in this circumstance. Specifically, the Commission has had a rebuttable presumption that consumers would view unmarked goods to be of domestic origin, and that when such goods contained a significant amount of foreign content this had to be disclosed to prevent deception. As explained in Part VII, the Commission finds this rebuttable presumption is no longer in the public interest. Nonetheless, up until this point, it was inaccurate to characterize the situation this simply.

that of the Customs Service is that the Customs Service uses more than one variation of substantial transformation in its regulation of the marking of imported goods. As explained in Section II, above, goods imported from NAFTA countries are subject to a tariff shift standard instead of the traditional substantial transformation test, and this may, in some instances, lead to divergent determinations of origin.

Moreover, the standards for determining country of origin for the marking of imports appear, in many respects, to be in a state of flux at the present time. Customs proposed, but then set aside, plans to extend the NAFTA tariff shift standards to the marking of all goods. In addition, international efforts in this area may lead to further changes in how country-of-origin determinations are made. As noted previously, the World Trade Organization is currently working on a proposal for uniform international standards for making country-of-origin determinations.[197] Should the United States ultimately adopt such a proposal, it may lead to significant changes in the current system of country-of-origin marking. In fact, some witnesses at the ITC's recent hearings on country-of-origin issues suggested that the United States take an approach similar to that of some other countries and abolish some or all of its marking requirements altogether, arguing that such requirements present a costly barrier to trade.[198]

Varying standards and the possibility of change in the short-term future complicate attempts at harmonization. Nonetheless, the Commission expects to continue monitoring activities in the area of marking of imports, and, where appropriate, to reevaluate its own standards in light of changes in this area.

In addition, a number of commenters argued that the fact that a "Made in USA" label and a "Made in (foreign country)" label may reflect different amounts of processing in their respective countries is likely to lead to consumer confusion. Under the deception standard of Section 5, however, it is by no means clear that consumers generally interpret foreign-origin claims in a manner analogous to how they interpret "Made in USA" claims or that they place as much value on foreign-origin claims as they do domestic ones. Consumers who look for "Made in USA" claims may do so because they are seeking products that are made by U.S. labor from U.S. components. To the extent that consumers prefer domestic products for patriotic reasons, they may attribute special meaning to U.S. origin claims out of concern for the United States economy and may not have similar concerns about the economy of a foreign country.[199] In addition, consumers reading a foreign-origin label may be more likely to care about the general fact that the product is made abroad than about which specific country or countries it is made in.[200]

Further, the United States is not alone in specifying a higher standard for domestic-origin claims than for foreign-origin claims. A number of the United States' trading partners also impose a higher threshold for goods marked with a domestic origin label. Canada, for example, uses a substantial transformation analysis to determine the country of origin to be marked on imports, but for "Made in Canada" claims requires not only that the last substantial production operation take place in Canada but also that the product contain at least 51% Canadian materials or direct labor. Switzerland requires that a product labeled "Made in Switzerland" contain at least 50% Swiss material and labor, and have its last major processing done in Switzerland.

2. Consistency With the Standards of Other Countries

A number of commenters urged the Commission to adopt a substantial transformation standard to ensure uniformity with the standards of other countries and to enable manufacturers selling in both the United States and abroad to use a single set of labels. Specifically, these commenters asserted that other countries, applying a substantial transformation test, may require that a good be marked "Made in USA" in cases where the Commission, under its traditional standard, would prohibit such a label, thereby requiring the manufacturer to maintain two separate sets of inventory.

The extent of this problem is not clear. Few other countries impose the sort of universal marking requirements on imported goods that are mandated in the United States.[201] Nonetheless, even where marking requirements are not universal, many countries appear to impose marking requirements on at least some (and sometimes many) categories of products. Those countries that do apply marking requirements use, in many cases, a substantial transformation standard, but do not necessarily apply it in a manner that is wholly consistent with the determinations reached by the United States, or by other countries. In addition, only limited information was submitted concerning whether other countries would accept or reject qualified statements of U.S. origin (*e.g.*, "Made in USA of U.S. and imported parts") on imported products.[202] Nor is it clear to what extent manufacturers must use different labels for exports in any event, because of language differences or other regulatory requirements of the foreign government.

Despite these uncertainties, the Commission is sensitive to the costs that may be imposed on manufacturers where different countries impose different labeling requirements, and the Commission has in other instances taken steps to promote harmonization with the practices of other countries.[203] The Commission has endeavored to address this problem in Section XIII of the proposed guides, which provides for use, in certain proscribed circumstances, of a modified U.S. origin

[197] Although "substantial transformation" is the basic test applied by many countries in determining whether and how to require imports to be marked, the implementation of that standard may vary from country to country. Hence, the WTO is working to harmonize this area.

[198] *See, e.g.*, ITC Report, at 2–8, n. 30.

[199] In addition, it is not clear that most consumers understand that a "Made in (foreign country)" label means only that the product was last substantially transformed in the foreign country and in fact may contain parts from many countries. Thus, to the extent that consumers understand a "Made in USA" claim to have an equivalent meaning to a "Made in (foreign country)" claim, they may expect that both claims mean the product was substantially all made in the named country.

[200] Some commenters have further suggested that differing standards for marking of imported and domestic goods puts U.S. manufacturers at a disadvantage because they may have to qualify their claims while a foreign manufacturer can use simply "Made in (country)" statement. The Commission fails to see a significant disadvantage in this situation. Consumers with a preference for U.S. goods are likely to prefer goods with a qualified U.S. origin label over those with an unqualified foreign origin label.

[201] Insofar as the other country does not require a product to be marked, the manufacturer may avoid any conflict in standards by choosing not to mark the product at all.

[202] According to U.S. Customs, Canada accepts goods from NAFTA countries which contain qualified statements such as "Made in USA with foreign components." Customs, #29, at 5–6. Other commenters, however, suggested that other countries might be unwilling to accept qualified statements. *See supra* note 58. *See also* FDRA, #27, at 4 (suggesting that foreign customs officials generally do not prohibit the addition of qualifying information, such as "Made in USA of foreign and domestic components," but that a label indicating the country of origin of components (*e.g.*, "Made in USA from Uppers from the People's Republic of China") would generally not be accepted).

[203] For example, the adoption of NAFTA created industry interest in being able to use symbols in lieu of words to provide care instructions under the Commission's Rule on Care Labeling of Textile Wearing Apparel. 16 CFR Part 423. Symbols are already in use in Canada and Mexico and, to aid in harmonization of requirements, the Commission has approved an interim conditional exemption to allow the use of certain care symbols in lieu of words. 62 FR 5724 (1997).

label intended to be acceptable internationally.

3. Consistency With the Buy American Act and Other Standards

A number of commenters advocating a 50% standard suggested that the Commission adopt such a standard because it is consistent with the Buy American Act (BAA). The BAA requires that, in its procurement of certain products, the United States government, in certain circumstances, buy products that are manufactured in the United States of at least 50% U.S. articles, materials or supplies.[204] Unlike the marking standards used by the Customs Service and other countries, however, the BAA does not relate in any way to the labeling of products, and its standard is not based on consumer perceptions. Rather, the BAA is simply a government procurement preference rule. The Commission is therefore not persuaded that consistency with the BAA, in and of itself, would lead to significant benefits. In addition, adoption of the BAA standard would nevertheless leave the Commission applying a standard different from that of the Customs Service, and the BAA advocates give few, if any, reasons for preferring consistency with the BAA to consistency with the arguably more relevant Tariff Act.

Similarly, the few commenters who suggested that the Commission adopt standards consistent with NAFTA Preference Rules also failed to articulate the relevance of these rules beyond the fact that they are already in existence. Like the BAA, these are preference rules and do not apply to labeling. Moreover, the NAFTA preference rules have the further disadvantage of being highly complex and of having standards that vary from product to product, thereby providing little predictability.

C. Practical Considerations

Each of the three proposed alternative standards necessarily presents its own set of benefits and burdens on those wishing to comply with it. A percentage content standard, as many commenters and participants in the public workshop noted, while presenting a bright-line standard, involves sometimes complex accounting issues. A substantial transformation standard, while already in use and familiar, requires reference to Customs rulings, and the case-by-case, fact-specific approach employed under Customs' traditional (*i.e.*, non-tariff shift) standard may result in a lack of predictability.[205] The all or virtually all standard likely poses the least burden in terms of calculation costs—a marketer need only determine whether its product contains any significant foreign content; if so, the product may not be labeled with an unqualified Made in USA label. On the other hand, the all or virtually all standard is less flexible and does not reflect the increasing internationalization of production and consumer recognition and acceptance of this in goods otherwise U.S. made.

In reviewing its policy on U.S. origin claims, the Commission has taken into consideration the costs likely to be borne by industry under any future standard, and has sought ways, consistent with preventing consumer deception, to minimize such costs. Specifically, the Commission has attempted to address these concerns in two ways. First, the Commission's proposed policy provides alternative means of compliance, so that marketers may weigh for themselves the costs and benefits of the alternative approaches and choose the approach that is likely to pose the fewest burdens on them. Second, the Commission has sought to provide a balance in its proposed guides between giving sufficient guidance to marketers on how to comply and giving them adequate flexibility, through such means as providing multiple options where appropriate and allowing the use of ordinary business and accounting practices, so that marketers may determine their compliance without significant alterations of, or additions to, their ordinary business practices.

V. Overview of Proposed Guides

After thoroughly reviewing the public comments and the proceedings of the public workshop, the Commission proposes to adopt the Guides for the Use of U.S. Origin Claims that appear at the end of this notice. Many of the commenters, including many of those in attendance at the workshop, asked that the Commission provide more thorough guidance to marketers on the use of U.S. origin claims, whatever standard the Commission ultimately adopted. Through these proposed guides, the Commission attempts to provide such guidance.[206] Guides are administrative interpretations of laws administered by the Federal Trade Commission. 16 CFR 1.5. Guides themselves, unlike rules promulgated pursuant to Section 18 of the FTC Act or other statutes for which the FTC is responsible, do not have the force and effect of law. Rather, they are intended to provide the public with guidance as to how the Commission is likely to apply the principles of Section 5 of the FTC Act to a particular issue—in this case, the use of U.S. origin claims. In addition, guides often provide the Commission with greater flexibility than would rules in responding to changes in evolving areas.

The Commission believes that consumers continue to understand "Made in USA" claims as representing a significant level of U.S.-derived content. Although many consumers may not be able to articulate exactly what it is that makes a product "Made in USA," the consumer survey evidence, including the 1991 and 1995 studies commissioned by Commission staff, indicates that, when given the opportunity, consumers consistently state that they understand "Made in USA" claims to connote a high degree (though not necessarily 100%) of U.S. content. This conclusion is reinforced by the overwhelming, albeit anecdotal, views of individual consumers who submitted comments.

At the same time, the Commission recognizes that there have been vast changes in the international economy since the Commission first required that goods labeled "Made in USA" be wholly domestic. Increasing globalization of production suggests that a requirement that even minor parts be all made in the United States is outdated and inflexible. Consumers appear to understand this as well. In the Commission's 1995 Attitude Survey 67% were willing to agree with a "Made

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[204] 41 U.S.C. 10a.

[205] Moreover, any attempt to use a modified version of the Customs standards, as suggested by some commenters, would require the FTC to engage in a similar case-by-case review.

[206] Although the Commission has attempted to provide significant guidance, the proposed guides, by necessity, cannot address all possible issues that may arise in the context of U.S. origin claims. For example, the proposed guides do not address the situation in which a marketer represents that a whole product line is of U.S. origin (*e.g.*, "Our products are Made in USA") when only some of the products in the product line are, in fact, made in the United States. Among other reasons, this is because such situations involve issues of advertising interpretation and deception law that are not specific to U.S. origin claims and have been addressed in Commission cases both within and outside the U.S. origin context. *See, e.g., Hyde Athletic Industries, supra*, Docket No. C–3695 (consent agreement accepted as final December 4, 1996) (complaint alleged that respondent represented that all of its footwear was made in the United States, when a substantial amount of its footwear was made wholly in foreign countries); *New Balance Athletic Shoes, Inc., supra*, Docket No. 9268 (consent agreement accepted as final December 2, 1996) (same); *Uno Restaurant Corp.*, File No. 962–3150 (consent agreement accepted for public comment January 22, 1997) (complaint alleged that restaurant chain represented that its whole line of thin crust pizzas were low fat, when only two of eight of the pizzas met acceptable limits for low fat claims); *Hägen-Dazs Company, Inc.*, Docket No. C–3582 (consent agreement accepted as final June 7, 1995) (complaint alleged that respondent represented that its entire line of frozen yogurt was 98% fat free when only certain flavors were 98% fat free).

in USA" label on a product where foreign inputs accounted for 30% of the total cost if the rest of the product was U.S.-made and final assembly took place in the United States.

Based on these conclusions, as well as the Commission's overall analysis of the record, the guides provide that a marketer making an unqualified U.S. origin claim must have a reasonable basis substantiating that the product is *substantially all* made in the United States. To give further guidance as to what constitutes a reasonable basis for this standard, there are two "safe harbors" set forth; if the product falls within either of these safe harbors, the Commission would not consider an unqualified U.S. origin claim for that product to be deceptive. Some consumers may hold views or understand claims differently from what is set forth in the "substantially all" standard. The Commission, however, believes that, as a general matter, it would not be in the public interest to bring a law enforcement action under section 5 of the FTC Act if a marketer satisfied either one of the safe harbors for meeting this standard. The two safe harbors represent alternative approaches to the determination of U.S. origin: one is a percentage content standard[207] and the other a "processing" approach. While both safe harbors are intended to ensure that a product is "substantially all" made in the United States, they reflect the Commission's recognition that different modes of determining U.S. origin may be appropriate for different types of products.

The first safe harbor requires that 75% of the total manufacturing costs of producing a product be U.S. costs and that the product be last substantially transformed in the United States. The Commission believes a product meeting the threshold of 75% U.S. content is likely to conform with consumer expectations for a product labeled "Made in USA," but this safe harbor nonetheless recognizes that even a largely U.S.-made product may necessarily include a relatively minor amount of foreign content.

The Commission gave serious consideration to those commenters who suggested that the most appropriate percentage standard is 50% U.S. content. The higher threshold proposed by the Commission, however, appears to be in greater accord with consumer understanding. As noted above, in the 1995 FTC Attitude Survey, for example, there was a significant drop-off between the number of consumers agreeing with a Made in USA claim for a product where U.S. costs accounted for 70% of all costs and those agreeing with such a claim for a product where U.S. costs accounted for 50% of costs. In fact, even where it was specified that final assembly of the product took place in the United States, significantly fewer than half of those surveyed were willing to accept a "Made in USA" label for a product with 50% U.S. content. Nor does the other consumer survey evidence in the record show much support for a 50% standard. In addition, as a practical matter, it should be noted that, if one includes the costs of final assembly in the U.S. cost calculation, a product for which U.S. costs constitute 50% of total production costs may well have less than half its inputs, by value, be of U.S. origin. Furthermore, because of the potentially lower wages paid to workers in other countries, a 50% cost standard does not ensure that 50% of the work (in terms, for example, of labor hours) was performed in the United States. Such factors add to the concern that a 50% threshold is unlikely to ensure that a product contains sufficient U.S. content to prevent a U.S. origin claim from being deceptive. The Commission believes that a 75% safe harbor more effectively ensures that a product promoted as "Made in USA" has substantially all U.S. content and better reflects consumer understanding.[208]

The second, alternative safe harbor would allow an unqualified U.S. origin claim where a product undergoes two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation must take place in the United States and the last substantial transformation of each of its significant inputs must take place in the United States. This safe harbor focuses on the processing of the product, and does not require that a marketer engage in any cost calculation or take into account any foreign content further than "one step back" in the manufacturing process. Nonetheless, by requiring that a product be made of parts that undergo their last significant processing in the United States, as well as requiring that the final processing of the product take place in the United States, the Commission believes that this safe harbor ensures that a Made in USA label reflects significant U.S. content and is unlikely to be deceptive to consumers.

In crafting this safe harbor, the Commission considered, but rejected, other processing-oriented standards. The most commonly used processing standard, of course, is the basic substantial transformation test applied by the Customs Service. By itself, however, substantial transformation does not necessarily ensure that a product contains significant U.S. content. It may, for example, reflect a relatively unsophisticated final assembly process putting together parts made elsewhere or it may be met by a process that in fact changes the nature of the product, but requires little U.S. work (*e.g.*, imprinting software onto a computer disk). The requirement in this safe harbor that there be an additional level of substantial transformation works to remedy these limitations. By requiring that all of a product's significant inputs have undergone substantial transformation in the United States, the safe harbor minimizes the vagaries of the substantial transformation standard and ensures that a product coming within the safe harbor is likely to meet consumer expectations for U.S. content.

The Commission also considered a process-oriented safe harbor proposed in the Ad Hoc Guidelines: that a product could be labeled with an unqualified U.S. origin claim if it underwent a majority of its processing in the United States. Although it has some conceptual appeal, there appear to be significant practical limitations to application of this majority of processing safe harbor. The Ad Hoc Guidelines specify no objective means of determining what constitutes "a majority of processing."[209] Instead,

[207] Although a percentage content standard safe harbor may pose complex accounting issues, the Commission has attempted to deal with practical problems such as multiple sourcing and price fluctuations in section XII of the proposed guides and to otherwise minimize any accounting burdens. The Commission also notes that some of the alternatives favored by commenters (for example, NAFTA Preference Rules and BAA) require this type of accounting.

[208] Several commenters, including the Ad Hoc Group and a number of participants at the public workshop, suggested that, were a 50% standard adopted, manufacturers whose products contained higher amounts of U.S. content could nonetheless advertise those products as, for example, "Wholly Made in USA" or "100% Made in USA." The problem with this approach, however, is that there is no basis to believe that consumers will understand the difference between a "Made in USA" claim and a "Wholly Made in USA" claim. That is, to the extent that at least some consumers already interpret "Made in USA" to mean that a product is virtually all of domestic origin, these consumers will not perceive "Wholly Made in USA" as indicating a greater amount of domestic content. Nonetheless, nothing in the proposed guides prohibits a marketer from using a "Wholly Made in USA" or "100% Made in USA" statement, or any other representation that a product contains a particular level of U.S. content, as long as the marketer is able to substantiate such a representation.

[209] Thus, one manufacturer may divide the production of its product into three steps: a, b, and c, and performing steps a and b in the U.S., determine that it has performed a majority of the processing in the U.S. At the same time, a second

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manufacturers apparently may divide their manufacturing process into separate steps as they deem appropriate and then count whether a majority of these steps are performed in the United States. The lack of an objective standard leaves open the possibility of manufacturer manipulation and is likely to lead to inconsistent labeling and consumer confusion. By contrast, the Commission's processing safe harbor avoids these concerns by referring to the existing Customs standards as its fixed, external measure.

In addition to providing guidance on the standard and safe harbors for making unqualified U.S. origin claims, the guides also address qualified U.S. origin claims (*i.e.*, claims that indicate that the product also contains foreign content or otherwise indicates that U.S. content does not constitute substantially all of the product). Marketers are free to make any qualified U.S. origin claim which is truthful and substantiated, and the guides provide examples of qualified claims that may be appropriate.

A number of commenters expressed doubts about the usefulness of qualified claims and suggested that such claims were impractical and likely to confuse consumers. The Commission disagrees with these conclusions. Qualified claims permit marketers for whose products an unqualified Made in USA claim would be deceptive to nonetheless inform consumers about the U.S. content in their products. By the same token, they allow consumers to receive such information and to distinguish between goods that are manufactured entirely abroad and those that are partially made in the United States. Marketers making efforts to use U.S. inputs when available and practical may tout the U.S. content they do use, and (at least in media allowing for lengthier discussion) explain their efforts to consumers. Moreover, the limited data available from the 1995 FTC Copy Test suggest that consumers viewing qualified U.S. origin claims did not misinterpret such claims and, in fact, had somewhat better recall of such claims than of unqualified Made in USA claims.

The Commission recognizes commenters' further concern that space limitations, in some instances, may pose problems for a marketer wishing to include an appropriate qualification on a small label. Qualifications, however, need not be lengthy; the guides provide examples of short qualified claims, and the Commission is confident that marketers will be able to develop others to meet this need.

The proposed guides also endeavor to address the situation faced by marketers who may face conflicting marking requirements in the United States and other countries. The guides build on a suggestion made by certain commenters that the Commission allow a "lesser mark" to be used where a product does not meet the standard for an unqualified "Made in USA" claim but has been substantially transformed in the United States, so that the product may be marked uniformly for domestic and foreign sale. Specifically, the guides propose to permit an alternative label claim, "Origin: USA," where a product has been substantially transformed in the United States and is exported to a country that requires that the product be marked with an indication of U.S. origin. Thus, in certain circumstances, the guides would allow marketers to use a single country-of-origin label for products sold domestically and abroad. As explained further below, this provision is intended primarily to apply to business-to-business transactions where there is less risk of deception. Nonetheless the provision does permit an "Origin: USA" label to be used in connection with the sale of consumer products, where appropriate actions are undertaken to assure that qualifying information is presented to U.S. consumers.

VI. Section-by-Section Analysis

Section I: Statement of Purpose

Section I of the guides explains that the purpose of the guides is to provide guidance to industry and the public as to how the Commission is likely to interpret Section 5 of the FTC Act as it applies to U.S. origin claims, so that they may conform their practices with legal requirements.

Section II: Scope of the Guides

Section II establishes that the guides apply to U.S. origin claims in whatever marketing media they may appear and whether they are conveyed through words, depictions or other means. This section also indicates that the proposed guides apply to claims for any product sold in the United States, whether for personal or commercial use, with certain, specified exceptions.

Section III: Structure of the Guides

Section III describes the structure of the guides and advises that claims may raise issues that are addressed under more than one section of the guides.

Section IV: Review Procedure

As part of its efforts to ensure that its policies continue to be relevant and appropriate, the Commission ordinarily reviews each of its rules and guides at least once every ten years. The Commission proposes to review these guides after five years. The Commission believes that a shorter time frame for review is appropriate here to assess the practical application of newly introduced guides. In addition, at that time, the Commission may assess the relevance of any changes in other marking requirements, including any standards adopted pursuant to the recommendations of the World Trade Organization. This section also provides that parties may petition the Commission at any time to alter or amend these guides based on new evidence related to consumer interpretation of U.S. origin claims or significant, relevant changes to U.S. or international country-of-origin marking requirements.

Section V: Definitions

Most of the definitions set forth here are self-explanatory. Some that may not be are the definitions related to manufacturing costs, and these are discussed below, in the analysis of Section VIII. "U.S. origin claim" is defined broadly to mean any claim, express or implied, that any product originates, in whole or in part, in the United States, and encompasses both unqualified and qualified claims.

Section VI: Interpretation and Substantiation of U.S. Origin Claims

This section sets out the basic legal framework for the Commission's evaluation of advertising and labeling claims. It states the general principle that a claim will be found deceptive under Section 5 of the FTC Act if it is likely to mislead consumers acting reasonably under the circumstances and is material. The provision also notes that a U.S. origin claim may be either express or implied; the accompanying *Example 1* describes a situation in which an advertisement, through a combination of words and depictions, is likely to convey a U.S. origin claim even though it contains no express statement that the product at issue is "Made in USA."

In addition, Section VI describes the long-standing requirement that a marketer making an objective product

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manufacturer, engaged in the production of the same product, but that does not perform steps a and b in the United States, may choose to view "c" as itself three steps (c, d, and e), for a total of five steps. If this second manufacturer performs steps c, d, and e in the United States, then it, too, presumably, has performed a majority of processing in the United States and can label its product "Made in USA."

claim must, at the time it makes the claim, have a reasonable basis substantiating the claim and that the reasonable basis consist of competent and reliable evidence. This section further notes that where a marketer's substantiation for its U.S. origin claims is based on an assessment of U.S. costs, that the requirement of "competent and reliable evidence" does not necessarily mandate that a particular formula be used to calculate U.S. costs, but that it generally will require that whatever calculation is used, it be based on generally accepted accounting principles.

Section VII: Requirements of Other Agencies

The proposed guides do not preempt, alter, or exempt a marketer from the requirements of any other marking statute or regulation. Thus, marketers must continue to follow the marking requirements administered by other government agencies, *e.g.*, the Tariff Act and the American Automobile Labeling Act.

Subsection A is directed to those instances in which the Customs Service, pursuant to the Tariff Act, requires that a product be marked with a foreign country of origin, and discusses how this requirement affects the analysis of whether, and in what manner, a U.S. origin claim may be made for the product. Because the Tariff Act requires markings on articles or their containers, but does not govern claims in advertising or other promotional material, these two types of media are discussed separately.

On a product label—*i.e.*, on an article or its container—where the Tariff Act requires that the product be marked with a foreign country of origin, Customs regulations permit indications of U.S. origin only when the foreign country-of-origin appears in close proximity and is at least of comparable size.[210] Thus, for example, under Customs regulations, a product may be properly marked "Made in Switzerland, finished in U.S." or "Made in France with U.S. and French parts," but it may not simply be labeled "Finished in U.S." if it is deemed to be of foreign origin. The proposed guides admonish marketers to comply with the Customs Service's requirements on this issue, regardless of whether the proposed guides would otherwise permit a U.S. origin claim.[211] Furthermore, the proposed guides note that the failure to clearly and prominently disclose the foreign manufacture of the article in conjunction with the U.S. origin claim may, in some circumstances, constitute a deceptive act or practice under Section 5 of the FTC Act, because of its potential to mislead consumers, as well as a violation of Customs law.

In advertising or other promotional material, there is no Customs requirement that foreign origin be indicated. Nonetheless, in situations where the Customs Service requires that the product itself be marked with a foreign country of origin, the Commission believes that in many instances it may be confusing and deceptive to consumers to make a U.S. origin claim for that same product in an advertisement (even if the U.S. origin claim would otherwise be permitted by the proposed guides) without disclosing the foreign manufacture of the product. Thus, the proposed guides would deem deceptive any unqualified U.S. origin claim made in advertising or other promotional material for a product that is required to be marked with a foreign country of origin under the Tariff Act (that is, notwithstanding any other provision in the proposed guides, a marketer should not advertise a product as "Made in USA" if the product is required to be labeled by Customs as, for example, "Made in Japan").[212]

The proposed guides and accompanying examples further encourage marketers to disclose foreign manufacture (where the product requires a foreign origin label) in conjunction with even qualified or limited U.S. origin claims so as to avoid potential deception. A consumer who sees an advertisement promoting a product as "Finished in U.S." may well feel misled if he or she then goes to purchase the product and finds the product labeled "Made in Switzerland," and depending on the context and consumer perception, the "Finished in U.S." claim may be deceptive. Therefore, the Commission believes that the better practice, where a foreign-origin marking is required by Customs, is to qualify the U.S. origin claim with a disclosure of foreign manufacture. Such a disclosure, made in close proximity to the U.S. origin claim (as would be required by the Customs Service on the product label), is most likely to make clear the limitations on the U.S. origin claim, and the proposed guides indicate that claims so qualified are unlikely to be considered deceptive.[213]

The Commission recognizes, however, that it may be possible to make a U.S. origin claim that is sufficiently specific or limited that it does not require an accompanying statement of foreign manufacture in order to avoid conveying a broader and unsubstantiated meaning to consumers. As discussed more generally below in the explanation of Section X of the proposed guides (which addresses U.S. origin claims for specific products and parts), whether a nominally specific or limited claim will in fact be interpreted by consumers in a limited matter is likely to depend on the connotations of the particular representation being made (*e.g.*, "finished" may be perceived as having a more general meaning than "painted") and the context in which it appears.[214] Marketers who wish to make U.S. origin claims in advertising or other promotional materials for products that are required by Customs to be marked with a foreign country of origin without an express disclosure of foreign manufacture should be aware that consumers may believe the literal U.S. origin statement is implying a broader meaning and a larger amount of U.S. content than expressly represented. Marketers are required to substantiate material implied, as well express, claims that consumers acting reasonably in the circumstances take from representations.[215]

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[210] 19 CFR 134.46.

[211] The Commission has provided similar admonitions in other situations where a guide is closely related to other statutes or regulations. *See* Guides for the Jewelry, Precious Metals, and Pewter Industries, 61 FR 27214, 27214 (1996) (to be codified at 16 CFR 24.4).

[212] Of Course, marketers required to label their products with a foreign country origin would generally not be able to meet either of the safe harbors for unqualified claims set forth in the guides, as both require that a product undergo its last substantial transformation in the United States. Moreover, because consumers perceive an unqualified "Made in USA" representation as a claim of substantial U.S. content, that claim is unlikely in any event to be substantiated where the product has undergone sufficient processing in a foreign country that it must be marked, according to Customs law, with its foreign origin.

[213] Although it is possible to read the statement "Finished in U.S." in an advertisement in a manner not inconsistent with the statement "Made in Switzerland" on a package label, the fact that the statements are intended to be read as complementary, rather than contradictory, is more readily apparent when the statements appear in conjunction with one another. Otherwise, consumers may take a broader message from the "Finished in U.S." representation, and the marketer may not be able to substantiate that broader claim.

[214] Even if not understood as conveying an unqualified U.S. origin claim, a claim about the U.S. origin of specific processes or parts may nonetheless convey a claim sufficiently broad that it would be perceived by consumers as contradicting a foreign origin label and/or as implying more U.S. content than might typically be found in a product substantially transformed abroad.

[215] The information provided here is intended to guide marketers in making qualified claims as described in Section IX, and claims about specific processes or parts, as described in Section X.

Subsection B is concerned with the American Automobile Labeling Act (AALA). The AALA requires that all new passenger vehicles bear a label that contains certain information about the vehicle's country of origin, including, among other things, the percentage of U.S. and Canadian parts and the place of final assembly. This provision makes clear that nothing in the guides is intended to alter these requirements in any way. Furthermore, to ensure that there are not conflicting standards for automobiles in labeling and in advertising, this subsection provides that nothing in the guides prohibits a marketer from making any representation, in advertising or elsewhere, that is required in labeling by the AALA or its implementing regulations.

Section VIII Unqualified U.S. Origin Claims

Section VIII constitutes the heart of the guides. It provides that a marketer may make an unqualified U.S. origin claim only if it has a reasonable basis that substantiates that the product is substantially all made in the United States. The provision then sets out two alternative safe harbors for marketers seeking guidance on what constitutes a reasonable basis that a product is substantially all made in the United States. Specifically, the guides provide that an unqualified U.S. origin claim will not be considered deceptive if the marketer possesses competent and reliable evidence either that the product contains 75% U.S. content (*i.e.*, U.S. manufacturing costs constitute 75% of the total manufacturing costs of the product) and was last substantially transformed in the United States (subsection A); or that the product has undergone two levels of substantial transformation in the United States (*i.e.*, that the final product was last substantially transformed in the United States and that all of the significant inputs into the final product were last substantially transformed in the United States). The Commission solicits comment on whether or not compliance with each of the proposed safe harbors is likely to ensure that a product promoted as "Made in USA" will be substantially all made in the United States.

In calculating 75% content, the guides provide that manufacturing costs shall include all manufacturing materials, direct manufacturing labor, and manufacturing overhead. Although commenters suggested a wide variety of formulas for calculating manufacturing costs, the Commission believes that this definition best captures those costs reasonably related to the actual manufacture of a product. The Commission has decided not to itemize each of the specific costs that may be included or excluded in this calculation. Instead, the guides indicate that a marketer may take into account those costs included in its finished-goods inventory cost or in its cost of goods sold, as those terms are used in accordance with generally accepted accounting principles. The Commission understands finished-goods inventory cost and cost of goods sold to be widely used accounting terms that are presumably calculated by all manufacturers in the course of their ordinary business; the Commission therefore expects that reliance on these terms is unlikely to pose significant definitional problems for marketers.[216]

Subsection VIII.A also provides that, in computing manufacturing costs, a marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. The Commission has thus rejected, for purposes of this safe harbor, a strict "one-step back" analysis. While such an approach has a facial simplicity that may provide some practical benefits, the Commission has concluded that a strict one-step back approach is likely to lead to inconsistent and unpredictable results, as well as the potential for significant consumer deception.

Commenters appear to have understood what constitutes a "step" in different ways. To some, "one-step back" is considered to refer to those inputs that the manufacturer of a final product has purchased from an outside supplier. If one accepts such a definition, however, then what constitutes a "step" depends on the degree of vertical integration of the final manufacturer. For example, consider a scenario involving the manufacture of a computer. In each case, final assembly of the computer takes place in the United States, as does assembly of the motherboard that is part of the computer. However, assume that in both instances, the microchips that make up the motherboard and presumably constitute much of its value are manufactured abroad. In the first scenario, the computer manufacturer buys completed motherboards from an outside domestic supplier. Under a one-step back analysis, this computer manufacturer, in calculating whether it met the 75% U.S. content safe harbor, would be permitted to treat the entire value of the motherboard as U.S. content. By contrast, in the second scenario, the computer manufacturer buys the foreign-made chips directly and assembles them into motherboards as part of its own in-house manufacturing process. When this second manufacturer looks back one-step to an outside supplier, it reaches the foreign-made chips and so must include the value of these foreign parts in its calculations. Thus, despite the fact that the inputs manufactured in the U.S. and abroad are identical in both cases, under a strict one-step back approach, the first manufacturer (depending on the extent of its other U.S.-made inputs) may be able to label its computer "Made in USA," while the second may not. Such an outcome provides an unfair advantage to the first manufacturer and is almost certain to mislead consumers comparing the country-of-origin labels on the otherwise identical products.

An alternative approach, to avoid the inconsistent results described above, is to define a "step" in a fixed way that would not vary with who performed it. Thus, to continue with the computer example described above, one could simply define a step back in the manufacture of the computer to be the motherboard or the chips. Unfortunately, there does not appear to be an obvious, objective basis for determining which of these should constitute a "step"—or whether, alternatively, one step back in this process should be viewed only as reaching the system unit subassembly that includes the motherboard and disk drives. The only way to ensure that manufacturers defined steps in similar ways would seem to be to issue product-by-product rulings as to what would be considered a step back in the manufacturing process.[217] The Commission believes that the considerable costs of such far-reaching

[216] It was suggested by a number of commenters, including the Ad Hoc Group, that marketers be able to exclude the cost of natural resources not indigenous to the United States from their calculation of total manufacturing costs. The Commission has concluded, however, that such an exclusion is likely to provide little benefit to marketers beyond that inherent in the 75% U.S. content safe harbor, as, in many instances, natural resources are unlikely to represent a large share of the finished product's cost and are likely to be far removed in the manufacturing process from the finished product. Moreover, adoption of such an exclusion would likely raise a number of further enforcement questions: for example, whether or not a natural resource that is found in the United States, but only in small amounts that are insufficient to meet industry demand, would be considered nonindigenous.

[217] Indeed, this was done for textile products under regulations issued by the Commission. 16 CFR 303.33. However, unlike other manufacturing, textile production is generally composed of a few discrete steps, *e.g.*, fiber to yarn to cloth to finished product.

regulation is likely to greatly exceed any benefit gained thereby.

The Commission has concluded that the better approach is to focus on where the value of the product lies. Thus, the proposed guides do not attempt to draw a bright line, but instead ask marketers to look back far enough to account for any significant foreign content. When using U.S.-supplied inputs with nontrivial value that the marketer would reasonably know to be made up of components, parts or materials that themselves are likely to be of significant value, the marketer should inquire of its supplier or, where appropriate, look further back in its own manufacturing process as to the U.S. content of that input. Thus, as set out in *Example 4* in this section of the proposed guides, the computer manufacturer would presumably know that a significant portion of the motherboard's value lies in the microchips. In calculating the U.S. content of its computer, the manufacturer should therefore not treat the motherboard as if it were 100% U.S. content, but rather should ask the motherboard manufacturer what the U.S. content of the motherboard is. To do otherwise would allow the marketer to overlook potentially significant foreign value.

Nonetheless, while rejecting a strict one-step back test, the Commission expects that, in many cases (particularly those involving a simple product or where most of the processing is done by the final manufacturer), marketers will in fact need to look back no more than one step (*i.e.*, to the immediate inputs into the final product) in calculating U.S. content and that in the remaining cases, a marketer would ordinarily need look no further than two steps back (*i.e.*, to the makeup of immediate inputs). Moreover, in practical terms, whether a marketer looks one or two steps back, it is expected that the marketer will have to communicate only with its immediate suppliers. In ensuring that it has a reasonable basis to substantiate that its product meets this safe harbor, a marketer may rely on the information provided by the immediate suppliers as to the U.S. content of the inputs supplied; unless the marketer has reason to believe its immediate suppliers' representations are false, it need not undertake an independent investigation or contact suppliers/manufacturers further back in the chain of production.

Finally, the 75% U.S. content safe harbor requires that a product undergo its last substantial transformation in the United States. This requirement reflects the importance consumers appear to attach to the site of final assembly in evaluating the appropriateness of a "Made in USA" label. Substantial transformation (or an equivalent concept reflecting final, significant processing in the United States) was also a component of virtually all the proposals advanced.

For purposes of both the 75% U.S. content safe harbor and the "two levels of substantial transformation" safe harbor set out at subsection VIII.B., the guides define "substantial transformation" to encompass both the Customs Service's case-by-case rulings and the enumerated shifts in tariff classification set forth in the NAFTA marking rules. Thus, in determining whether a final product (and, under the two levels of substantial transformation safe harbor, each of that product's significant inputs) was last substantially transformed in the United States, a marketer may refer to either of these standards, as it chooses.[218]

With respect to the "two levels of substantial transformation" safe harbor, *Example 3* in subsection VIII.B. of the guides makes clear that where a product, such as a compact disk, is not comprised of traditional "parts," a marketer may look to whether the product as a whole has undergone its last two substantial transformations in the United States.

Section IX: Qualified U.S. Origin Claims

Where a marketer is unable to make an unqualified U.S. origin claim for its product, the marketer may still communicate to consumers that the product contains U.S. content through the use of appropriately qualified claims. Section IX provides a number of examples of possible qualified claims. These range from the general (indicating simply the existence of foreign content, *e.g.*, "Made in USA of U.S. and imported parts) to the specific (indicating the percent of U.S. content, which parts are imported, or the particular foreign country from which the parts come). The examples further include short qualified claims that may be useful on labels, as well as more complete explanations that may be more appropriate in advertising or other media. As indicated in the proposed guides, these examples are not intended to be exhaustive: a marketer may make any qualified claim for which it possesses adequate substantiation. Section IX further provides that, to the extent qualifications are necessary to ensure that a claim is not deceptive, those qualifications must be clear, prominent, and understandable.

Section X: U.S. Origin Claims for Specific Processes and Parts

The Commission recognizes that there may be U.S. origin claims, while not specifically referring to foreign parts or processing, that are specific enough so as to convey to consumers only a limited claim that a particular process is performed in the United States or that a particular part is manufactured in the United States and that do not convey a general claim of U.S. origin. Section X provides that marketers may use such claims—that a product, for example is "designed" or "painted" or "written" in the United States or that a particular part or component is produced in the United States—without further qualification as long as the claim is truthful and substantiated. This provision further distinguishes claims about specific processes from general or indefinite claims such as "created," "produced," or "manufactured" in USA, which are likely to be viewed as synonymous with "Made in USA."

Example 3 indicates that "Assembled in USA" will be understood not as a claim about a specific process but rather as a general claim of U.S. origin, equivalent to a "Made in USA" designation. It therefore should be qualified to indicate the presence of foreign content if used to describe a product that is not substantially all made in the United States. It is the Commission's tentative conclusion that "Assembled in USA" does not convey a sufficiently specific and limited meaning to consumers so as not to require further qualification. "Assembly" potentially describes a wide range of processes, from simple, "screwdriver" operations at the very end of the manufacturing process to the construction of a complex, finished item from basic materials. Consumers may thus be confused or misled by this term or may simply take from it an unqualified "Made in USA" claim.[219]

The Commission solicits comment on whether a product that does not meet the standard for unqualified U.S. origin claims should nonetheless be permitted to be labeled or advertised as

[218] Marketers are reminded, however, that they may not make an unqualified U.S. origin claim for any product which the U.S. Customs Service requires to be labeled with a foreign country of origin without running afoul of Section VII.A. of the proposed guides as well as U.S. Customs Service regulations.

[219] The Commission has before it only limited empirical evidence on consumer understanding of "assembled" claims and this evidence appears to be inconclusive. In the 1995 FTC Copy Test, for example, 30% of respondents asked an open-ended question about what an "Assembled in USA" claim meant, responded that the product was made in the United States with some foreign parts; on the other hand, 18% of respondents said that claim meant that the product was made in USA.

"Assembled in USA" without further qualification. If so, under what circumstances should an unqualified "Assembled in USA" claim be permitted, *i.e.*, what processing must a product undergo in the United States to support this claim?

In addition, *Examples 6–8* present circumstances in which a U.S. origin claim about a specific process or part may be literally true but may nonetheless convey a more general U.S. origin claim, because of the manner in which the claim is presented or the context in which it appears. *Example 8*, in particular, provides a scenario in which advertising embellishments may serve to convey a meaning beyond that of the literal words.

Section XI: Comparative Claims

This section provides that claims of U.S. origin that contain a comparative statement (*e.g.*, "More U.S. content than our competitor") may be made as long as such claims are truthful and substantiated. Through the text and accompanying examples, this provision advises marketers that such comparative claims should be presented in a manner that makes the basis for comparison clear, should not be used to exaggerate the U.S. content of a product, and should be based on a meaningful difference in U.S. content between the compared products. *Example 1* further indicates that appropriate comparative claims may be used even where use of an unqualified U.S. origin claim is likely to be deceptive. On the other hand, *Example 3* indicates that a comparative claim is likely to be deceptive if it is made for a product that does not have a significant amount of U.S. content or does not have significantly more U.S. content than the product to which it is being compared.

Section XII: Miscellaneous Issues

This provision addresses several practical issues in applying these guides.

A. Multiple Sourcing

This provision is directed at an issue that may arise in calculating the percentage of U.S. content in the product. In the course of producing a product a manufacturer may obtain an input from multiple sources, some in the United States and some abroad. The Commission recognizes that it would place a considerable burden on manufacturers to trace which specific inputs went into each finished product and to individually label each of those finished products accordingly. Thus, this subsection provides that a manufacturer may use the average U.S. cost of an input over a reasonable period of time in its assessment of U.S. content, and may label all of the finished units with a uniform origin label based on this assessment.

B. Price Fluctuations

This provision is also directed at the calculation of the percentage of U.S. content in a product. The Commission recognizes that the price of inputs may vary frequently (if not constantly) over time and this may affect a marketer's assessment of U.S. costs. This subsection addresses this issue by providing that a marketer may, at its option, use either the average price of the input over a fixed period of time or the price of all of the inputs on a particular date, where those prices are updated on a regularly scheduled basis.

C. Multiple-Item Sets

This provision addresses the situation where a marketer is selling a set of several discrete items, some of which are domestically produced and some of which are produced abroad, and the packaging together of the discrete items does not constitute a substantial transformation of those items. The provision indicates that it is likely to be deceptive to make an unqualified U.S. origin claim for such a set of items and further advises marketers that when making qualified claims for such a set, they should make clear to which items the U.S. origin claim refers. In addition, this provision notes that Customs rules require that each of the foreign-made items or the container bear an appropriate country-of-origin marking, and marketers are reminded that, in marking the items or their container, they must follow Customs requirements.

Section XIII: "Origin: USA" Labels

As noted above, in certain instances, a foreign country (most often applying a form of substantial transformation) may require that a product exported from the United States be marked with an indication of U.S. origin, while that same product would not, under the proposed guides, be permitted to bear an unqualified U.S. origin claim when sold in the United States. This provision establishes a specific designation of U.S. origin—"Origin: USA"—that may be used, in certain, limited circumstances, to uniformly label such products for sale in both the United States and abroad. [220]

The proposed guides would permit marketers to use an "Origin: USA" label on any product sold in the United States that is not required to be marked with a foreign country of origin under Customs rules, provided that the product is also exported to a country that requires that it be labeled with an indication of U.S. origin, and the label used is no more prominent than necessary to meet the requirements of the country to which it is being exported. For non-consumer products (*i.e.*, for products sold to businesses for commercial or industrial use), no further requirements need be met.

Because consumers may potentially be misled by an "Origin: USA" label and confuse it with a "Made in USA" claim, however, the proposed guides provide that consumer products (*i.e.*, products sold to consumers for personal, family or household use) may only be marked with an "Origin: USA" label if they also disclose to consumers, through other means, the existence of any substantial foreign content. [221] In order to accommodate the problems faced by those selling in multiple countries, this provision contemplates additional flexibility in disclosures in this circumstance. Thus, Section XIII provides that disclosures made to consumers may be made through appropriately qualified claims on packaging, stickers or hangtags visible to consumers prior to purchase and need not be made on the label itself.

The Commission solicits comments on the proposed establishment of a "lesser mark" of "Origin: USA." Specifically, the Commission requests comment on whether such a mark is likely to be of significant utility to those selling goods in more than one country; whether "Origin: USA" in particular is likely to be an acceptable marking to foreign Customs officials; whether the distinction between consumer goods and goods sold to businesses for commercial use is an appropriate one; the extent of any burden the additional requirements for disclosures on consumer goods imposes on marketers (and whether the flexibility of using means of disclosure such as hangtags that need not be permanently affixed at the time of manufacture mitigates these burdens); and whether the additional requirements for disclosures on

[220] Phrasing similar to "Origin: USA" was suggested by EIA, #193 at 13. Other terms for a "lesser mark," including "Country of Origin: USA" and "Product of the U.S." were suggested by 3M, the International Mass Retail Association, and the Joint Industry Group. 3M, #198, at 2; IMRA, #184, at 6–8; JIG, #196, at 4. The Commission, however, believes that "Origin: USA" is somewhat less likely to be confused by consumers with the more familiar "Made in USA" designation than are these alternative terms.

[221] Competitors who do not sell their product in a country that requires U.S. marking and so cannot use an "Origin: USA" designation may also be placed at a competitive disadvantage without further qualifications to consumers.

consumer goods are sufficient to prevent consumer deception.

VII. Goods With No Country of Origin Marking—Rebuttable Presumption

As part of its review of U.S. origin claims, the Commission has taken the opportunity to re-examine its approach to products that do not bear any country-of-origin marking. Historically, the Commission has employed a rebuttable presumption that goods that were not labeled with any country of origin would be understood by consumers to be made in the United States. As a result, the Commission required that foreign origin be disclosed if unmarked goods contained a significant amount of foreign content. In its April 26, 1996 Federal Register notice, the Commission sought comment as to whether or not this presumption continued to be valid. Only three commenters addressed this issue. BMA stated that consumer perception of the origin of unlabeled products varies among product categories, depending largely upon the extent to which foreign-made products are present in a particular market.[222] The UAW suggested that the absence of any indication that there could be substantial foreign content in unmarked products could, at least to some degree, mislead consumers.[223] Finally, Watch Producers asserted that the buying public is no longer likely to believe that a product with no origin designation was made in the United States because of public awareness of such developments as the decline in domestic production in many industries and the presence of foreign-owned manufacturing facilities in the United States.[224]

Based on the facts, well-documented in many of the comments received in connection with this review, that manufacturing and the sourcing of components have become increasingly global in nature, and that consumers appear to be increasingly aware that goods they buy are produced throughout the world, the Commission concludes that it is no longer appropriate to presume that reasonable consumers will interpret the absence of a foreign country-of-origin mark by itself, as a representation that the product was made in the United States. Thus, the Commission has determined to cease using its traditional presumption. Instead, the Commission will require disclosure of foreign origin on unmarked goods only if there is some evidence that, with respect to the particular type of product at issue, a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are domestic. *Cf. El Portal Luggage, Inc.*, FTC No. C–3499 (1994) (consent agreement involving alleged removal of foreign origin labels on luggage in store featuring prominent "Made in USA" signs).

[222] BMA, #195, at 8–9.

[223] UAW, #174, at 4.

[224] Watch Producers, #192, at 8–9.

VIII. Request for Comment

Interested parties are invited to submit comments on the proposed Guides for the Use of U.S. Origin Claims. Commenters are welcome to submit comments on any aspect of the proposed guides, but are requested to avoid merely resubmitting views or information submitted in response to the Commission's earlier requests for public comment in this matter.

All written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

In addition, the Commission will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Commission's Home Page on the World Wide Web (http://www.ftc.gov.). At this time, the FTC cannot receive comments made in response to this notice over the Internet.

IX. Text of Proposed Guides

Guides for the Use of U.S. Origin Claims

I. Statement of Purpose

These guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary compliance with such laws by members of industry. These guides specifically address the application of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, to U.S. origin claims in advertising and labeling.

Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. Conduct inconsistent with the positions articulated in these guides may, however, result in corrective action by the Commission under Section 5 of the FTC Act if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

II. Scope of the Guides

These guides apply to U.S. origin claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, trade names, or through any other means. The guides apply to any claims about the U.S. origin of a product in connection with the sale, offering for sale, or marketing of such product in the United States for personal, family, or household use, or, except as provided, for commercial, institutional or industrial use. These guides, however, do not apply to claims made for any product subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act (15 U.S.C. 70), the Wool Products Labeling Act (15 U.S.C. 68), or the Fur Products Labeling Act (15 U.S.C. 69).

These guides do not preempt regulation of other federal agencies or of state and local bodies governing the use of U.S. origin claims. Compliance with other federal, state or local laws and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5 of the FTC Act.

III. Structure of the Guides

The guides are composed of a series of guiding principles on the use of U.S. origin claims. These guiding principles are followed by examples that generally address a single deception concern. A given claim may raise issues that are addressed under more than one example and in more than one section of the guides.

IV. Review Procedure

Five years after the date of final adoption of these guides, the Commission will seek public comment on whether and how the guides need to be modified in light of ensuing developments. Parties may petition the Commission to alter or revise these guides based on substantial new evidence regarding consumer interpretation of U.S. origin claims or significant, relevant changes in United States or international country-of-origin marking requirements. Following review of such a petition, the Commission will take such action as it deems appropriate.

V. Definitions

For the purposes of these guides:

(a) *Commission* means the Federal Trade Commission.

(b) *Consumer product* means any product sold or offered for sale to consumers for personal, family, or household use. It excludes products sold to businesses that are for commercial, industrial or institutional use and that are not intended for resale to consumers.

(c) *Foreign content* means the portion of a product that is not attributable to U.S. costs.

(d) *Input* means any item, including but not limited to a subassembly, component, part or material, that is part of, and is made or assembled into, a finished product.

(e) *Marketer* means any individual, partnership, corporation, organization, or other entity that makes a U.S. origin claim in advertising, labeling, promotional materials, or in any other form of marketing.

(f) *Substantial transformation* means a manufacturing process which results in an article's having a new name, character, and use different from that which existed prior to the processing. For purposes of these guides, a good will be considered to have been substantially transformed if (1) it would be considered to be substantially transformed under 19 CFR 134 and the rulings of the U.S. Customs Service and decisions of the United States courts issued pursuant thereto; or (2) it undergoes an applicable change in tariff classification and/or satisfies other applicable requirements set out in the NAFTA marking rules, 19 CFR 102.

(g) *Tariff Act* means the Tariff Act of 1930, as amended, including but not limited to 19 U.S.C. § 1304, and all regulations and administrative rulings issued pursuant thereto.

(h) *Total cost(s) or total manufacturing cost(s)* means the total cost of all manufacturing materials, direct manufacturing labor, and manufacturing overhead, whether U.S. or foreign. Generally, total cost will be equivalent to finished-goods inventory cost or the cost of goods sold, as those terms are used in accordance with generally accepted accounting principles.

(i) *U.S. content* means the portion of a product that is attributable to U.S. costs.

(j) *U.S. cost(s) or U.S. manufacturing cost(s)* means those costs attributable to U.S. manufacturing materials, U.S. direct manufacturing labor and U.S. manufacturing overhead.

(k) *U.S. origin claim* means any claim, whether express or implied, that a product is made, manufactured, produced, assembled or created, or otherwise originates, in whole or in part, in the United States, or that any work that contributes to the manufacture, production, assembly or creation of the product is performed in the United States.

(l) *United States* means the several states, the District of Columbia, and the territories and possessions of the United States.

VI. Interpretation and Substantiation of U.S. Origin Claims

A. Deception

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. As set forth in the Commission's Deception Policy Statement,[1] a representation (or omission) will be found deceptive under Section 5 if it is likely to mislead consumers acting reasonably under the circumstances and is material. A representation about U.S. origin may be made by either an express claim (such as "Made in USA") or an implied claim. In identifying implied claims, the Commission will focus on the overall net impression of an advertisement, label, or other promotional material. This requires an examination of both the representation and the overall context, including the juxtaposition of phrases and images, and the nature of the transaction. Marketers should be alert to the possibility that, depending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin. Indeed, absent qualification, general implied claims of U.S. origin are likely to convey that the product was substantially all made in the United States, and care should be taken to ensure that any such representation is not likely to be misleading. Further information concerning the Commission's interpretation of claims is available in the Deception Policy Statement.

B. Substantiation

A corollary to the principle of deception is the principle of advertising substantiation. Any party making an express or implied claim that presents an objective assertion about the U.S. origin of a product must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. To the extent that a marketer's substantiation for its U.S. origin claims is based on an assessment of U.S. costs, there is no single prescribed method or formula for performing this calculation. However, competent and reliable evidence in such circumstances typically will be based on generally accepted accounting principles. Further guidance on the reasonable basis standard is set forth in the Commission's Policy Statement on the Advertising Substantiation Doctrine.[2] Because general implied claims of U.S. origin are likely to be understood as unqualified claims that the product was substantially all made in the United States, marketers should possess appropriate substantiation before making such representations.[3] See Section VIII of these guides.

Example 1: A company advertises its product in an advertisement that features pictures of employees at work at what is identified as the company's U.S. factory. These pictures are superimposed on an image of a U.S. flag, and the advertisement bears the headline "American Quality." The advertisement is likely to convey an unqualified U.S. origin claim to consumers. The company should be able to substantiate such a claim or should include appropriate qualifications or disclosures.

Example 2: A product is manufactured abroad by a prominent U.S. company. The fact that the company is headquartered in the United States is widely known. The company's advertisements for its foreign-made product prominently feature its brand name. Assuming that the brand name does not specifically denote U.S. origin (*e.g.*, the brand name is not "Made in America, Inc."), the use of the brand name, without more, does not constitute a U.S. origin claim.

VII. Other Statutory and Regulatory Requirements

Nothing in these guides should be construed as exempting any product or marketer from the requirements of any other statute or regulation bearing upon country-of-origin advertising or labeling, and marketers should be mindful of such other requirements. The following principles are intended to explain the interaction between these guides and certain other laws, and to minimize potential conflicts.

[1] Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); *reprinted in Cliffdale Associates, Inc.*, 103 F.T.C. 110, appendix (1984).

[2] 49 FR 30,999 (1984); reprinted in Thompson Medical Co., 104 F.T.C. 648, appendix (1984).

[3] Of course, representations that a product contains a particular amount of U.S. content (*e.g.*, "U.S. content: 20%" or "Entirely Made in USA") should be substantiated by competent and reliable evidence that the product contains the represented amount of U.S. content.

A. Tariff Act

1. U.S. origin claims on an article or its container. Notwithstanding any other provision in these guides, where an article or its container is required to be marked with a foreign country of origin pursuant to Section 304 of the Tariff Act, any U.S. origin claim appearing on the article or its container should comport with the requirements of the Tariff Act and its associated regulations. Specifically, the U.S. Customs Service has issued regulations requiring, in pertinent part, that:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.[4]

In addition, where an article is deemed to be of foreign origin for marking purposes under the Tariff Act, making a U.S. origin claim on the article or its container, or making such a claim without clearly and prominently disclosing the foreign manufacture of the article, may, in some circumstances, constitute a deceptive act or practice under Section 5 of the FTC Act.

2. U.S. origin claims other than on an article or its container. The Tariff Act does not address foreign origin marking other than on an article or its container. Where the Tariff Act requires that an article or its container be marked with a foreign country of origin, U.S. origin claims about the article in advertising or through other means may confuse and mislead consumers. Therefore, notwithstanding any other provision of these guides, marketers should not make unqualified U.S. origin claims in advertising or other promotional materials for products that are required by the Tariff Act to be marked with a foreign country of origin. Furthermore, to avoid potential consumer deception, marketers should consider qualifying any U.S. origin claim (including U.S. origin claims for specific processes or parts) made in advertising or other promotional materials for such a product so as to disclose clearly the foreign manufacture of the article; claims so qualified are unlikely to be considered deceptive.

Example 1: A ceramic figurine is fabricated in Kenya and then painted and glazed in the United States. The figurine is packaged in a clear, plastic box for sale. The Customs Service, pursuant to the Tariff Act, requires that the figurine be marked "Made in Kenya," and a label to this effect appears on the bottom of the figurine. Affixed to the top of the box is a large sticker that says "Painted in USA." The statement on the sticker would likely not be permitted by the U.S. Customs Service because it fails to include in close proximity to the statement concerning U.S. origin the name of the country of origin preceded by "Made in" or a similar formulation as required by U.S. Customs regulations. A single statement that the figurine was "Made in Kenya, painted in the U.S." would likely be permitted by U.S. Customs and is unlikely to be deceptive under Section 5 of the FTC Act.

Example 2: A piano is constructed in Australia using some U.S. and some non-U.S. parts. The piano is then shipped to the United States, where it undergoes some simple, final assembly and gets a final coat of lacquer. Under the Tariff Act, the piano is required to be marked "Made in Australia." An advertisement for the piano includes the statement "Made in USA of U.S. and imported parts." The statement in the advertisement is likely to convey a meaning to consumers that contradicts the meaning conveyed by the required foreign origin statement on the label, and is therefore likely to be deceptive.

Example 3: A television set assembled in Korea using a U.S.-made picture tube is shipped to the United States. Under the Tariff Act, the television set must be marked "Made in Korea." A pamphlet distributed by the company that makes the television set states "Although our televisions are assembled abroad, they always contain U.S.-made picture tubes." This statement would likely not be deceptive. However, a representation in an advertisement or promotional pamphlet that "All our picture tubes are Made in the USA" (without any disclosure of foreign manufacture) might, depending on the context, convey a broader implied claim than could be substantiated in light of the significant foreign processing that triggers the foreign origin marking requirement under the Tariff Act.

B. American Automobile Labeling Act

Nothing in these guides affects or alters a marketer's obligation to comply with the requirements of the American Automobile Labeling Act (49 U.S.C. 32304) or any regulations promulgated pursuant thereto, nor does anything in these guides prohibit a marketer from making any representation in advertising or other promotional material for any passenger motor vehicle that is required in labeling for that passenger motor vehicle by this Act or its associated regulations.

VIII. Unqualified U.S. Origin Claims

Except as provided in Section XIII, below, a marketer making an unqualified U.S. origin claim should, at the time it makes the claim, possess and rely upon a reasonable basis that substantiates that the product is substantially all made in the United States.

Provided, however, that it will not be considered a deceptive practice for a marketer to make an unqualified U.S. origin claim if the marketer meets the conditions set out in either Paragraph A or B, below.

A. 75 percent U.S. Content

At the time it makes the claim, the marketer possesses and relies upon competent and reliable evidence that: (1) U.S. manufacturing costs constitute 75% of the total manufacturing costs for the product; and (2) the product was last substantially transformed in the United States.

In computing U.S. or total manufacturing costs, the marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. For simple products, or for products that undergo most of their processing by the final manufacturer, the marketer may, in many cases, have to look only "one step back," i.e., the marketer may look only at the immediate inputs into the finished product, and for those inputs that undergo their last significant manufacturing step in the United States, the marketer may count 100% of their cost as U.S. costs. For more complex products, the marketer may, for some of its inputs, have to look further back, i.e., the marketer may need to consider the amount of U.S. and foreign content in the inputs themselves.

Example 1: A company manufactures lawn mowers in its U.S. plant, making most of the parts (housing, blade, handle, etc.) itself from U.S. materials. The engine, however, is bought from a supplier. The engine's cost constitutes 50% of the total cost of producing the lawn mower, while the manufacture of the other parts and final assembly costs constitute the other 50% of the total. The engine is manufactured in a U.S. plant from U.S. and imported parts; U.S. manufacturing costs constitute 60% of the engine's total cost. Thus, U.S. costs constitute 80% of the total cost of manufacturing the product (50% [U.S. cost of final assembly and other parts] + (60% x 50%) [U.S. cost of engine]). Because U.S. manufacturing costs exceed 75% of total manufacturing costs and the last substantial transformation of the product took place in the United States, a claim that the lawnmower is "Made in USA" would likely not be deceptive.

Example 2: A toaster is made from primarily U.S. parts and is assembled in Canada in a process that constitutes a substantial transformation. U.S. costs account for 75% of the total costs of manufacturing the product. A claim that the toaster is

[4] 19 CFR 134.46.

"American Made" would likely be deceptive, as the last substantial transformation occurs outside the United States.

Example 3: Masking tape is produced in the United States and sent to Mexico to be cut into individual rolls. U.S. costs constitute 90% of the total cost of manufacturing the tape. Cutting the tape is not considered a substantial transformation, and U.S. Customs rules do not require that the tape be labeled with a foreign country of origin when it is brought back into the United States. It would likely not be deceptive to label the tape "Made in USA."

Example 4: A computer maker assembles computers in the United States. It buys motherboards for its computers from an outside supplier who assembles the motherboards in the United States. The computer maker intends to run an ad promoting its "U.S. Made Computers." To substantiate the claim the computer maker may not simply assume that the motherboards are composed wholly of U.S. content. Because the components of the motherboard (such as microchips) are likely to represent a significant portion of the motherboard's value and may be produced in other countries, the computer maker should ascertain from the motherboard manufacturer what percentage of the costs of producing the motherboard are U.S. costs.[5]

Example 5: A computer maker assembles computers in the United States. It constructs its own motherboards with U.S.-made microchips that it purchases from an outside company. Because the materials used to make microchips are unlikely to represent significant value, the computer maker likely need not look back any further in the manufacturing process and may assume, for computation purposes, that the microchips contain 100% U.S. content.

Example 6: A U.S. wallet manufacturer purchases plastic inserts from a U.S. manufacturer of such inserts. The inserts account for approximately 2% of the total cost of making the wallet, which is last substantially transformed in the United States. The wallet manufacturer knows that the insert manufacturer sometimes uses imported plastic to make the inserts. Because the value of the plastic is likely to be *de minimis* or insignificant relative to the overall cost of manufacturing the wallet, the wallet manufacturer may, for computation purposes, treat 100% of the cost of the plastic insert as U.S. costs.

Example 7: A table lamp is assembled in the United States from an imported base and a variety of other, U.S.-made parts, including a Tiffany-style lampshade. The imported base was made using U.S.-made brass. A marketer may include the value of the U.S. brass in its computation of total U.S. costs even though the brass was made into a base abroad.

[5] In addition, to comply with the Tariff Act, the marketer may specifically need to determine the origin of the CPU (Central Processing Unit) and BIOS (Basic Input/Output System). Pursuant to the determinations of the U.S. Customs Service, a motherboard has to be marked with a foreign country of origin unless the CPU and BIOS are of U.S. origin.

B. Two Levels of Substantial Transformation

At the time it makes the claim, the marketer possesses and relies upon competent and reliable evidence that: (1) The product was last substantially transformed in the United States; and (2) all significant inputs into the final product were last substantially transformed in the United States.

Example 1: A tape recorder is made up of three major subassemblies, and a few additional minor parts (which account for only a small fraction of the finished product's cost). Each of the subassemblies is manufactured in the United States, using primarily imported components. Final assembly of the tape recorder takes place in the United States. The assembly of each of the subassemblies as well as the final assembly would be considered substantial transformations under the Tariff Act. A label that said "Made in America" would likely not be deceptive.

Example 2: A refrigerator is assembled in the United States from a number of components, and this assembly process constitutes the last substantial transformation of the product. Several of the refrigerator's components are themselves assembled in the United States, but certain other major components, such as the compressor and the motor, are manufactured abroad. Because the last substantial transformation of these major components occurred abroad, unless manufacturing and assembling costs attributable to the United States constitute at least 75% of the total manufacturing costs of the refrigerator, an unqualified claim that the refrigerator was "Manufactured in USA" would likely be deceptive.

Example 3: A blank compact disk is manufactured in the United States from imported materials, in a process that constitutes a substantial transformation. Music is then encoded onto the compact disk in the United States, in a process that also constitutes a substantial transformation and is the last substantial transformation of the product. Because both the manufacture of the compact disk and the encoding of music onto the disk would be considered substantial transformations under the Tariff Act, the last two levels of substantial transformation take place in the United States, and a printed statement on the compact disk that said "USA" would likely not be deceptive, even if the imported materials used in the manufacture of the compact disk account for more than 25% of the total manufacturing costs.

Example 4: A cordless telephone is made up of a base unit, a handset, and a power cord. Each of these inputs is last substantially transformed in the United States and is made from primarily foreign parts or materials. The final assembly of the inputs into a complete telephone, however, is not considered a substantial transformation by the U.S. Customs Service. Thus, two levels of substantial transformation do not take place in the United States, and an unqualified claim that the telephone is "American Made" would likely be deceptive.

IX. Qualified U.S. Origin Claims

Where a product is not substantially all made in the United States, a claim of U.S. content should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. Marketers may make qualified claims about the U.S. content of their products as long as those claims are substantiated by competent and reliable evidence. The examples below and elsewhere in these guides present options for qualifying a claim. These options are intended to provide "safe harbors" for marketers who want certainty about how to make qualified U.S. origin claims. The examples are not the only permissible approaches to qualifying a claim, and they do not illustrate all claims or disclosures that would be permissible under Section 5. In addition, some of the illustrative disclosures may be appropriate for use on labels but not in print or broadcast advertisements and vice versa.

In order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent, and understandable to prevent deception. Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness of the qualification, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent. Finally, if a qualified U.S. origin claim applies only to a part of a product or component, this limited applicability should be made clear as well (See Section X, below).

Example 1: A piece of luggage is produced in the United States from leather that was tanned and processed in Italy. U.S. manufacturing costs account for 50% of the total manufacturing costs of the luggage; the leather, 40%; and miscellaneous imported parts, 10%. A claim that the luggage was "Made in the USA of Italian leather" would likely not be deceptive.

Example 2: A fireplace poker is made from an iron forging that is imported from Canada and finished and painted in the United States. U.S. processing accounts for 40% of the total cost of manufacturing the poker. Assuming that the U.S. processing constitutes a substantial transformation and thus a foreign country of origin marking is not required under the Tariff Act, a label claim that the fireplace poker was "Made in the USA from imported forging" would likely not be deceptive. (Were a foreign origin marking required, a claim on the label such as "Made in Canada. Finished in U.S." would likely be appropriate.)

Example 3: A snowblower is assembled in the United States. The engine is manufactured in the United States and other parts, such as the frame and the wheels, are

imported from several different countries. Together, the U.S. assembly and U.S. parts account for 55% of the total cost of manufacturing the product. An advertising circular that described the snowblower as "Proudly made in America with U.S. and imported parts" would likely not be deceptive.

Example 4: An exercise treadmill is assembled in the United States. All of the major parts of the treadmill, including the motor, the frame, and the electronic display, are imported. A few of the incidental parts of the treadmill, such as the dial used to set the speed, are manufactured in the U.S.; together, they account for approximately 5% of the total cost of all the parts. Because the value of the U.S.-made parts is essentially *de minimis* in relation to the value of all the parts, a statement on a hangtag on the treadmill that states that it is "Made in USA of U.S. and imported parts" would likely be deceptive. A claim that the treadmill was "Made in the U.S. from imported parts" or "Assembled in the United States with primarily foreign parts" would likely not be deceptive.

Example 5: A typewriter is produced in the United States from a mix of U.S. and imported parts. Assuming that the marketer can substantiate that U.S. costs constitute 60% of the total costs of manufacturing the typewriter, a label that said "60% American Made" or "U.S. Content: 60%" would likely not be deceptive.

Example 6: A vacuum cleaner is assembled in the United States from a mix of U.S. and imported parts. Depending upon the availability of particular parts, the U.S. content of the product varies between 50% and 70%. A claim on the box that said "Contains at least 50% U.S. content" or "50–70% U.S. content" would likely not be deceptive.[6]

Example 7: A swing set is made up of various components (poles, swing, ladder, etc.), all of which are imported. The unassembled components are packaged together in a box in the United States; the swing set is designed for assembly at-home by the purchaser. A statement on the box that said "Assembled in U.S. of imported parts" would likely be deceptive as neither the mere packaging together of parts nor assembly by the purchaser is likely to be understood by consumers as constituting "assembly."

Example 8: A bicycle is assembled in the United States of a U.S.-made frame and various other U.S. and imported parts. The total U.S. content of the bicycle is 65%. The bicycle manufacturer distributes brochures for the bicycle that state, in part, "To ensure that our customers get the highest quality product possible, we assemble all of our bicycles in our own factories in the United States and, wherever possible, we use American-made parts. Unfortunately, some bicycle parts, such as gear shifts, are no longer manufactured in this country; in these cases, we use the highest quality import available." Assuming the statements are truthful, and the brochure does not contain other, contrary representations, the statements would likely not be deceptive.

[6] See also Section XII.A., below, for information on using average costs to assess U.S. content.

Example 9: A marketer manufactures in-line skates in its Maryland plant from primarily imported parts; the U.S. content of the skates is approximately 30%. The marketer runs full-page magazine advertisements with a headline in large, bold print that says "Built in Baltimore*." At the bottom of the page is a fine print disclosure that says "*All our skates are Built in Baltimore, Parts Nos. 122, 353, and 812 imported." Because of its size and location, the disclosure is not clear and prominent. As a result, it is unlikely to be seen by consumers or to affect the net impression conveyed by the advertisement that the entire product was made in the United States. The advertisement, therefore, is likely to be deceptive. In addition, the language of the disclosure is ambiguous unless consumers are readily able to ascertain what the part numbers refer to, and should be clarified.

X. U.S. Origin Claims for Specific Processes or Parts

Regardless of whether a product is substantially all made in the United States, a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product. Claims, however, that a product is, for example, "created," "produced," "manufactured," or "assembled" in the United States likely would not be appropriate under this provision. Such terms are unlikely to convey to consumers a message limited to a particular process performed, or part manufactured, in the United States. Rather, they are likely to be understood by consumers as synonymous with "Made in USA" and therefore as unqualified U.S. origin claims.

Example 1: A manufacturer of crystal stemware imports uncut, crystal stemware from abroad. The manufacturer then hand cuts elaborate designs into the bowl and stem, and performs certain other finishing operations, in its United States factory. Under the Tariff Act, the stemware is considered to have been last substantially transformed in the United States, and so is not required to bear a foreign country-of-origin marking. Because U.S. costs account for only approximately 50% of the total manufacturing costs of producing the finished stemware, an unqualified U.S. origin claim is likely to be deceptive. However, a label that said "Hand-Cut in the United States" would likely not be deceptive.

Example 2: Computer software is designed and written in the United States and copied in the United States onto floppy disks that are manufactured in Japan. A package label that stated "Software written in the United States" would likely not be deceptive.

Example 3: A sewing machine that is made with primarily foreign parts undergoes its final manufacturing step in the United States. The marketer of the sewing machine wishes to advertise it as "Assembled in USA." Because the term "assembled" may refer to a broad range of actions on the part of the manufacturer, it is unlikely to be understood by consumers as connoting a specific process. Therefore, the claim would likely be deceptive and should be qualified so as to indicate the presence of foreign parts (e.g., "Assembled in USA of foreign parts").

Example 4: A U.S.-based furniture maker designs a sofa in the United States and has the sofa manufactured in Denmark. Because the Tariff Act would require that the sofa be marked with a foreign country of origin, a tag that said only "Designed in USA" would not be permitted by the U.S. Customs Service. Were the furniture maker, however, to note the U.S. design of the product in conjunction with an appropriate foreign origin marking, e.g., "Made in Denmark from U.S. designs," the statement would likely be both permissible under the Tariff Act and not deceptive under Section 5 of the FTC Act.

Example 5: A faucet is manufactured in the United States from a U.S.-made cartridge (which controls water flow) and other parts, all of which are foreign-made. The foreign parts account for sufficient cost that an unqualified U.S. origin claim could not be made for the faucet. The marketer of the faucet has a World Wide Web page on the Internet that advertises the faucet as "Made with our exclusive U.S.-made cartridges." The claim is likely not deceptive.

Example 6: A food processor is assembled in the United States from a U.S.-made blade and other parts, all of which are foreign-made. Under the Tariff Act, the assembly of the food processor constitutes the last substantial transformation of the product. U.S. costs, however, account for less than 75% of the total costs of manufacturing the food processor. The marketer of the food processor takes out a print advertisement that includes at the top a large red, white, and blue "Made in USA" logo. Above the logo, in very small print, appears the word "Blade." It is likely that the advertisement will not adequately convey to consumers that the U.S. origin claim is limited to the blade only, but instead, is likely to convey a deceptive unqualified U.S. origin claim. The marketer should more clearly and prominently disclose the limitation on the claim.

Example 7: A picture frame is assembled in the United States. The wooden outer frame is manufactured in the United States, but the other parts, such as a sheet of glass, posterboard backing, and miscellaneous hardware, such as clips and a hook for hanging, are imported. The foreign parts account for sufficient cost that an unqualified U.S. origin claim may not be made for the product. A package label features the statement "Frame Made in USA." Because the statement is ambiguous—it is not clear whether it refers to the picture frame as a whole or just to the wooden outer pieces—it is likely to be deceptive.

Example 8: The Acme Camera Company assembles its cameras in the United States.

The camera lenses are manufactured in the United States, but most of the remaining parts are imported; U.S. costs constitute 40% of the total cost of manufacturing the camera. A magazine advertisement for the camera is headlined "Beware of Imported Imitations" and states "Other high-end camera makers use imported parts made with cheap foreign labor. But at Acme Camera, we want only the highest quality parts for our cameras and we believe in employing American workers. That's why we make all of our lenses right here in the United States." The advertisement is likely to convey to consumers a claim that more than a specific product part (the lens) is of U.S. origin, and the marketer should be prepared to substantiate whatever broader U.S. origin claim is conveyed.

XI. Comparative Claims

Claims of U.S. origin that include a comparative statement should be truthful and substantiated by competent and reliable evidence. In addition, comparative U.S. origin claims should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. Comparative claims should not be used in a manner that, directly or by implication, exaggerates the amount of U.S. content in a product.

Example 1: In an advertisement for its stereo speakers, the manufacturer states that "We do more of our manufacturing in the United States than any other speaker manufacturer." The manufacturer assembles the speakers in the United States from U.S. and imported components. U.S. costs, from final assembly operations at the manufacturer's U.S. factory and from U.S.-made parts, are significant but constitute less than 75% of the total cost of manufacturing the speakers, and, therefore, the manufacturer cannot substantiate an unqualified U.S. origin claim. However, provided that the manufacturer can substantiate that the difference between the U.S. content of its speakers and that of the other manufacturers' speakers is significant, the comparative claim would likely not be deceptive.

Example 2: A product is marked with the statement "30% More U.S. content." The claim is ambiguous, and depending on the context, could be understood to suggest either a comparison to another brand or to a previous version of the same product. The marketer should clarify the claim to make the basis of the comparison clear, for example, by saying "More U.S. content than brand 'X'." Alternatively, the marketer should be prepared to substantiate whatever comparison is conveyed to reasonable consumers.

Example 3: A product is advertised as having "twice as much U.S. content as before." The U.S. content in the product has been increased from 2% in the previous version to 4% in the current version. As neither the amount of U.S. content in the current version of the product, nor the difference between the U.S. content in the current and previous versions of the product, is significant, the comparative claim would likely be deceptive.

XII. Miscellaneous Issues

A. Multiple Sourcing

Where a manufacturer purchases an input from multiple sources, some of which manufacture the input in the United States and some of which manufacture the input abroad, the manufacturer may base its assessment of U.S. costs on the average annual U.S. cost for that input (or the average U.S. cost for that input over some other fixed and reasonable time period), based on the cost of the units made in the United States relative to the total cost of the units acquired from all sources.[7]

Example 1: A computer maker assembles computers in the United States and buys hard drives from several different U.S. and Brazilian suppliers with whom it has contracts for the coming year. The hard drives from the U.S. suppliers are entirely U.S.-made and the hard drives from the Brazilian suppliers are entirely Brazilian-made. Over the course of the year, the computer maker, pursuant to its contracts, will spend $6.5 million on U.S.-made hard drives and $3.5 million on Brazilian-made hard drives. Sixty-five percent of the cost of the hard drives may be counted as U.S. costs.

Example 2: A firm sells brooms that it assembles in the United States. The firm buys bristles for its brooms from both U.S. and foreign suppliers. The firm does not enter into long-term contracts for bristles but, instead, buys them on an as-needed basis from any of several suppliers, based on the price and availability at that time. As a result, when it prints country-of-origin labels for its brooms, the firm does not know what proportion of the bristles will be U.S.-made that year. The firm may use the average U.S. cost for the bristles from the previous year, assuming that the firm does not have reason to believe that the proportion of U.S.-made bristles will be significantly lower in the coming year.

Example 3: An electric saw is manufactured with either a U.S.-made or German-made blade, both of which cost the same amount. The blades constitute 50% of the total cost of producing the saw, and, over the course of year, 70% of the blades are U.S.-made. The remaining parts of the saw are U.S.-made, and final assembly of the saw takes place in the United States. Thus, averaged over a year, U.S. costs are equal to 85% of the total manufacturing costs ((70% × 50%) [average U.S. content for the blade] + 50% [final U.S. assembly and other U.S. parts]). Because the average U.S. cost is greater than 75% of the total manufacturing costs, it would likely not be deceptive to print "Made in USA" on the box that the saw is sold in, even though some individual saws (those with imported blades) contain only 50% U.S. content.

Example 4: The facts are the same as in Example 3, above, except that only 20% of the saw blades are U.S. made. Thus, U.S. costs would constitute 60% of the total manufacturing costs ((20% × 50%) + 50%). Because the average U.S. cost is less than 75% of the total manufacturing costs, a printed claim on the box that said "Made in USA" would likely be deceptive. The claim should be qualified to indicate the possible inclusion of foreign parts. Examples of qualified claims that are likely not to be deceptive include: "Manufactured in USA with domestic or imported parts"; "Made in USA. Contains parts from U.S. or Germany"; "Assembled in USA. Blade Made in U.S. or Germany." (Alternatively, the manufacturer may separately label those boxes that contain saws with U.S.-made blades with a label that says "Made in USA," while leaving the other boxes unlabeled or labeling them with an appropriately qualified claim).

B. Price Fluctuations

In assessing the costs of particular inputs, the price of which may fluctuate over time, a marketer need not calculate the costs on an item-by-item basis for the purposes of complying with these guides and Section 5 of the FTC Act. Rather, the marketer may take as the cost of an input the average price of the input over the period of a year (or over some other fixed and reasonable period). Alternatively, the marketer may use a "snapshot" of the prices for each of the inputs on a particular date and then update these prices on a regularly scheduled basis. A marketer using either the averaging or snapshot approaches should update its calculations annually or, if not annually, after some other interval that is reasonable in light of industry practices and known or anticipated changes in the relevant markets.

Example 1: A company manufactures a product in the United States from U.S. and imported parts. One of the key parts is a widget, the price of which fluctuates seasonally, tending to be higher in the spring and summer (when widgets are in short supply) and lower in the fall and winter (when widgets are plentiful). In calculating the percentage of U.S. content of its product, the company may use the average price paid for the widget over the past year, assuming that the company does not have any reason to believe that the average price paid for widgets will be significantly different in the coming year. It may be deceptive for the company to use a "snapshot" of the price at either the high or low point in order deliberately to minimize or maximize the costs of the widgets for purposes of calculating U.S. content.

Example 2: A marketer sells a product labeled "Made in USA." As substantiation for this claim, the marketer relies on a computation performed three years earlier

[7] Under these guides, marketers may use an average of U.S. costs to calculate whether a produce contains 75% U.S. content. Marketers should be aware that the U.S. Customs Service, however, requires a determination of origin for each individual item.

that shows the product to consist of 75% U.S. content. Even if the marketer is still using the same suppliers for its inputs, it is likely that three years is too long a period to guard against significant shifts in prices or the make-up of parts. Therefore, the marketer should review the costs of its inputs to confirm that, on the basis of the updated prices, it can still substantiate an unqualified "Made in USA" claim.

C. Multiple-Item Sets

Where a product consists of a packaged set of discrete items, some of which are domestically produced and some of which are imported, and the packaging together of the items does not constitute a substantial transformation of those items, the Tariff Act requires that the imported items (or their container) be marked with a foreign country of origin. In addition, because this set of items was not last substantially transformed in the United States, it would not fall within either of the safe harbors for unqualified U.S. origin claims set forth in Section VIII of these guides. Therefore, an unqualified U.S. origin claim for such a set of items is likely to be deceptive. In making any qualified claim of U.S. origin for such a set, a marketer should make clear to which items any U.S. origin claim refers, and, for claims made on the article or its container, should comply with the requirements of the U.S. Customs Service for foreign origin marking.

Example 1: A tool set consists of four separate hand tools (hammer, wrench, pliers, and screwdriver) packaged in a sealed black plastic case. Three of the tools are made in the United States, while the fourth, the screwdriver, is made in Indonesia. It would be deceptive to label the tool set "Made in USA." A label that said "Screwdriver made in Indonesia. Other tools made in USA," or "Hammer, wrench, and pliers made in USA. Screwdriver made in Indonesia," would likely not be deceptive.

Example 2: Perfume, which is made and bottled in the United States, is packaged with a promotional gift, an umbrella that is made in England. The two items are packaged together into a set in the United States and wrapped in clear cellophane. Both the bottle of perfume and the umbrella are labeled with their respective countries of origin, and the country-of-origin label on the umbrella is clearly visible to consumers. No country-of-origin statement need be placed on the package as a whole. However, it would likely not be deceptive to label the package "Perfume made in USA. Umbrella made in England" or "Packaged in the U.S. Contains U.S. and imported items. See item for country of origin." It would likely be deceptive to label the package as a whole "Made in USA."

Example 3: Several individual pots and pans are packaged and sold together as a set. Some of the pots and pans are made in the United States, while others are made abroad. A department store advertising circular promoting the pots and pans states "Set contains U.S. and imported items." This representation would likely not be deceptive. [8]

XIII. "Origin: USA" Labels

Notwithstanding any other provision herein, a product that is sold in the United States and is not required to be marked (and the container of which is not required to be marked) with a foreign country of origin pursuant to the Tariff Act may be marked or labeled with the phrase "Origin: USA" provided that:

A. The product is also exported in more than a *de minimis* quantity to a country or countries requiring that the product be marked to indicate U.S. origin;

B. The mark or label is no more prominent than necessary to meet the requirements of the other country to which the product is being exported; and

C. For consumer products, the existence of substantial foreign content is disclosed to consumers through other means, such as appropriately qualified claims on packaging, stickers, or hangtags that may be seen by consumers before purchase.

Example 1: An electrical switch is manufactured in the United States from imported inputs and could not, under these guides, be labeled with an unqualified "Made in USA" claim. The switch is sold both in the United States and in countries that require that the switch be marked with an indication of U.S. origin. The switch is sold to businesses for industrial use and is not sold to consumers. The statement "Origin: USA" embossed on the side of the switch would likely not be deceptive.

Example 2: Shoes are assembled in the United States of U.S. and imported components; the assembly process is considered a substantial transformation by the U.S. Customs Service. On the bottom of each shoe is printed "Origin: USA." The shoes are sold in the United States and are also exported to countries that require the shoes to be marked with an indication of U.S. origin. For those shoes sold in the United States, a sticker is affixed to the outside of each shoe box that says "Made in USA of U.S. and imported components." The "Origin: USA" statement would likely not be deceptive.

Example 3: A marketer assembles a product in the United States of imported parts; the U.S. content is 30%. A television commercial for the product features the words "Origin: USA" superimposed over the product and in large, stencil-type letters that fill the width of the screen. Simultaneously, the voice-over in the commercial talks about the importance of buying American products. The commercial is likely to be deceptive unless it contains adequately clear and prominent qualifications or disclosures of the substantial foreign content of the product. Where a marketer uses an "Origin: USA" statement in circumstances beyond those prescribed in this provision, the marketer should recognize that the statement may convey to consumers a broader, or even unqualified, U.S. origin claim, and the marketer should be preprared to substantiate any claim that is conveyed to reasonable consumers.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[8] Note, however, that the U.S. Customs Service would not permit this label to appear on the box, as the Tariff Act requires an indication of a specific foreign country of origin.

APPENDIX.—LIST OF COMMENTERS

Name	Comment No.	Citation abbreviation*
Ad Hoc Group	183	Ad Hoc Group
Adams, John W	276.	
Alabama Textile Manufacturers Association	12	ATM
Altschul, Frank J. Jr	41.	
Amato, Charles T	11.	
American Apparel Manufacturers Association	31	American Apparel
American Advertising Federation	100	AAF
American Association of Exporters & Importers	37, 187	AAEI
American Automobile Manufacturers Association	103	AAMA
American Electronics Association	87	AEA
American Export Association	291	American Export
American Hand Tool Coalition	91, 186	American Hand Tool
American International Automobile Dealers Association	85	AIADA
American Textile Manufacturers Institute	92, 171	ATMI
American Wire Producers Association	65	AWPA
Angst, Charles R	250.	
Appel, Edwin	235.	
Association of Home Appliance Manufacturers	108, 188	AHAM
Association of International Automobile Manufacturers	101, 180	AIAM
Atanosian, M. George	315.	
Attorney General of California	43, 343	AGs
Attorney General of Connecticut	43, 343	AGs
Attorney General of Florida	43, 343	AGs
Attorney General of Hawaii	43, 343	AGs
Attorney General of Illinois	185	AGs
Attorney General of Iowa	43, 343	AGs
Attorney General of Kansas	43, 343	AGs
Attorney General of Maryland	43, 343	AGs
Attorney General of Michigan	43, 343	AGs
Attorney General of Missouri	43, 343	AGs
Attorney General of Nevada	43, 343	AGs
Attorney General of New Hampshire	43, 343	AGs
Attorney General of New Jersey	138, 343	AGs
Attorney General of New York	43, 343	AGs
Attorney General of North Carolina	114, 343	AGs
Attorney General of Ohio	43, 343	AGs
Attorney General of Pennsylvania	134, 343	AGs
Attorney General of Rhode Island	43, 343	AGs
Attorney General of Tennessee	122, 343	AGs
Attorney General of Washington	343	AGs
Attorney General of West Virginia	43, 343	AGs
Attorney General of Wisconsin	151	AGs
Automotive Parts Rebuilders Association	30	APRA
Bain, Lauren S	224.	
Baker, Charles A	258.	
Balluff, Inc	69	Balluff
Barndt, Samuel L. Jr	111.	
Baudier, Roger	216.	
Benson, Walter	301.	
Bernard, Philip J. Ph.D	75.	
Best, Donald A	125.	
Bevins, William H	79.	
BGE, Ltd	60	BGE
Bicycle Manufacturers Association of America	86, 195	BMA
Bill Haley & Associates, Inc	128	Haley
Bissell, Bill	204.	
Bonacci, Kenneth P	202.	
Bowman, Sandra J	121.	
Brady, Patrick	289.	
Brennan, John M	221.	
Britton, Wallace B	76.	
Bromley, Jesse F	13.	
Brother International Corp./Brother Industries USA, Inc	109	Brother
Brown & Williamson Tobacco Corp	96	B&W
Burger, Carol	208.	
Burychka, William M	150.	
Butcher, Kathryn K	236.	
Cagle, Thelma	243.	
Caiazza, Butch	254.	

APPENDIX.—LIST OF COMMENTERS—Continued

Name	Comment No.	Citation abbreviation *
Canty, John	203.	
Capital Mercury Shirt Corp	9	Capital
Carter, Howell & Elizabeth	233.	
Casey, Bic	238.	
Caterpillar, Inc	104	Caterpillar
Centerville Lumber Co	145	Centerville
Cerulli, Ernest A	211.	
Citizen Action	181	Citizen Action
Clark, Shirley & Harry W	311.	
Clownzo	293.	
Colson, Arnold	240.	
Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers	63	Domestic Steel Wire Rope
Compaq Computer Corp	62	Compaq
Conair Corp.	155	Conair
Consumers for World Trade	14	CWT
Corbeil, Alan	302.	
Cornelius, Judith Ann, John & Carla	214.	
Crafted With Pride in USA Council, Inc	35, 176	Crafted With Pride
Cranston Print Works Co	38, 314	Cranston
Dalton, Helen B	280.	
Dean, Earl S. 3rd	281.	
Deere & Co	57	Deere
Diamond Chain Co	55	Diamond Chain
Dixon Family	316.	
Donovan, C. Ross Jr	229.	
Douglas, Joe R	279.	
Duncan, Therese A	290.	
Dunstan, Douglas F	318.	
Dynacraft Industries	45, 173	Dynacraft
Dzurko, Edward D	83.	
Eberman, Leslie	230.	
Electronics Industries Association	84,193	EIA
Elliott, Carlton E	248.	
Engineers Political Action Committee	335	EPAC
Estwing Manufacturing Co	179	Estwing
Falcone, Melissa	249.	
Farish, Bob	218.	
Federation of the Swiss Watch Industry	47	FSWI
Ferguson, Frances Wade	263.	
Footwear Distributors & Retailers of America	27, 172	FDRA
Footwear Industries of America, Inc	52, 177	FIA
Foster, Bonnie	292.	
G.G. Bean, Inc	36	Bean
Gates Rubber Co	50	Gates
Gay, Janice L	312.	
Gearhart, David	231.	
Gonzales, Gloria	113.	
Gooderum, Hugo G. Jr	17.	
Gordon, J. Richard	330	
Graham, Herbert	285.	
Grant, William M	205.	
Green, Betty L	298.	
Guill, E.M	261.	
Hagen, Robert W	268.	
Hager Hinge Co	160	Hager
Hammons, Elizabeth	284.	
Haney, George G	78.	
Hart, Joseph M	77.	
Hayworth, Ron	278.	
Helfand, Arnold H	226.	
Henkel, Klaus P	6.	
Heyden, Timothy J	328.	
Higgins, Dorothy	244.	
Hinrichsen, Chuck	242.	
Hinshaw, Michael S	66.	
Hoover, Virginia	5.	
Horn, Eddie A	273.	
Hoskins, William	265.	
Hott, Mary Catherine A	223.	

APPENDIX.—LIST OF COMMENTERS—Continued

Name	Comment No.	Citation abbreviation *
Houtz, R.P	225.	
Hrebik, Richard K	306.	
Huber, Patricia D	4.	
Hyde Athletic Industries, Inc	130	Hyde
ICOM	123.	
Impress Industries, Inc	308	Impress
International Brotherhood of Teamsters	107	IBT
International Electronics Manufacturers & Consumers of America	99, 189	IEMCA
International Leather Goods, Plastics, Novelty & Service Worker's Union, AFL–CIO/CLC	80	ILGPNSWU
International Mass Retail Association	46, 184	IMRA
Iredell, Capt. David Stanton	253.	
ITT Industries	165	ITT
James, Lloyd A	135.	
Jefferson Democratic Club of Flushing, NY	61	Jefferson Democratic Club
Jefferson, Lewis & St. Lawrence Counties Central Trade & Labor Council, AFL–CIO	146	AFL–CIO/Jefferson
Jenkins, Elizabeth	246.	
Jenkins, Michael V	305.	
Jewelers of America, Inc	58	Jewelers
Johnston & Murphy	324	Johnston
Joint Industry Group	88, 196	JIG
Jones, Darrell S. Jr	234.	
Jules Jergusen/Helbros International	18, 19	Jergenson
Kaiser, Jim & Ricky	275.	
Kammerer, John	120.	
Kane, John	71.	
Kearney, Mark S	115.	
Kennedy, Gregory B	70.	
Kennedy, Patrick R	262.	
King, Harry D	256.	
Klaus, Karl	82.	
Klof, John C	331.	
Knight, Larry J	259.	
Kossuth, Joseph J	158, 159.	
Kotur, Nick	124.	
Kujovsky, Joseph S	336.	
Laclede Steel Co	143	Laclede
Lewis, Marvin	147.	
Lisaro, Anne	270.	
Luggage & Leather Goods Manufacturers of America, Inc	23	LLGMA
Lyness, William J	319.	
Lyons, Helen	154.	
Lyons, James A. Jr	175.	
Made in the USA Foundation	28	MUSA Foundation
Manchester Trade, Ltd	21	Manchester Trade
Manufacturing Jewelers & Silversmiths of America, Inc	164	MJSA
Martirone, Fred L	222.	
Masterjohn, John	313.	
McClain, Dianna	2.	
McFall, Marlene	304.	
McFarlane, Mrs. Don	272.	
McMakin, Dorothy	255.	
Meeks & Sheppard	105	Meeks
Megasack Corp	132	Porterco/ Megasack
Menahen, Helen	200.	
Metz, Anthony	303.	
Meyers, Phyllis	274.	
Minnesota Mining & Manufacturing	98, 198	3M
Mistretta, Steve Jr	283.	
Moroz, Marion J	326.	
National Association of Consumer Agency Administrators	137	NACAA
National Association of Hosiery Manufacturers	16, 170	NAHM
National Consumers League	117	NCL
National Cotton Council of America	131	NCCA
National Council on International Trade Development	89	NCITD
National Electrical Manufacturers Association	102, 182	NEMA
National Knitwear & Sportswear Association	53	NKSA

APPENDIX.—LIST OF COMMENTERS—Continued

Name	Comment No.	Citation abbreviation*
Nelson, Marcy	210.	
New Balance Athletic Shoe, Inc	44, 197	New Balance
Oakes, Michael G	228.	
Oakland, Dana	73.	
Oakland, Joe	72.	
Okidata	42	Okidata
Packard Bell Electronics	64	Packard Bell
Packing Machinery Manufacturers Institute	56	PMMI
Padden, Roger M	296.	
Paige, Ray	271.	
Peiffer, Peter W & Nancy	126.	
Pennington, K	288.	
Pilger, Bill	325.	
Polaroid	90	Polaroid
Porter, Darlene	220.	
Porterco, Inc	132	Porterco/ Megasack
Precision-Kidd Steel Co., Inc	142	Precision-Kidd
Processed Plastic Co	167	Processed Plastic
Publia, Thomas J	136.	
Rachal, Raylinda	232.	
Red Devil, Inc	139	Red Devil
Republic of Korea Fair Trade Commission	141	KFTC
Retired Workers Council, Region 1-A, UAW (Buy American Union Label Committee)	33	UAW/RWC
Ricardi, Richard A	149.	
Richardson, Michael R	299.	
Richter, Alan D	212.	
Rollins, Ernest R	66.	
Rothschild, Naomi	295.	
Rubber & Plastic Footwear Manufacturers Association	32, 178	RPFMA
Samenfeld, Dr. Herbert W	20.	
Santeford, Bruce A	329.	
Scaglione, Lisa	217.	
Scheiderer, Clifton & Joy	110.	
Schubach, Stan	294.	
Schultz, Gerald R	321.	
Seagate Technology	95	Seagate
Secant Chemicals, Inc	247	Secant
Shawe, Ted	338.	
Sills, William R	241.	
Sinclair, David	287.	
Sinclair, James	300.	
Sisler, Jerry	22.	
Smith, Al M	112.	
Smith, David A	297.	
Smith, James E	317.	
Smith, Michael C	327.	
Soltys, Frank M	207.	
Spreitzer, Dr. Francis F	266.	
Stamm, Patricia	15.	
Stanley Works	59, 194	Stanley
Steel Technologies	152	Steel Technologies
Stein, John	81.	
Steinberg, Alan	320.	
Steinmetz, Craig I	227.	
Story, L	215.	
Stroebel, W	213.	
Studt, William C	74.	
Summitville Tiles, Inc	162	Summitville
Sunbeam Corp	39	Sunbeam
Taylor, Veronica	252.	
Tech Team, Inc	307	Tech Team
Tejada, Henry A.F	239.	
Tile Council of America, Inc	161	TCA
Tileworks	156	Tileworks
Timken Co	51	Timkin/ Torrington
Tompkins Brothers Co., Inc	157	Tomkins
Torrington Co	51	Timkin/ Torrington

APPENDIX.—LIST OF COMMENTERS—Continued

Name	Comment No.	Citation abbreviation*
Toshiba America Electronic Components, Inc	34	Toshiba
Toyota Motor Sales, U.S.A., Inc	26	Toyota
Tuchel, Harold	7.	
Tyson, Joan	127.	
U.S. Customs Service	29	Customs
U.S. Department of Commerce	166	Commerce
U.S. General Services Administration	106	GSA
U.S. Rep. Neil Abercrombie	25	Abercrombie
U.S. Rep. Peter Blute	25	Abercrombie
U.S. Rep. Glen Browder	119	Browder
U.S. Rep. Peter Deutsch	340	Deutsch
U.S. Rep. John D. Dingell	153	Dingell
U.S. Rep. Barney Frank	140	Frank
U.S. Rep. Joseph P. Kennedy II	67	Kennedy
U.S. Rep. Dale E. Kildee	333	Kildee
U.S. Rep. Jerry Kleczka	337	Kleczka
U.S. Rep. James B. Longley, Jr	118	Longley
U.S. Rep. Donald A. Manzullo	334	Manzullo
U.S. Rep. Edward J. Markey	67	Kennedy
U.S. Rep. Marty Meehan	25	Abercrombie
U.S. Rep. John Joseph Moakley	25	Abercrombie
U.S. Rep. Carlos J. Moorhead	339	Moorhead
U.S. Rep. Richard Nea	67	Kennedy
U.S. Rep. John W. Olver	25	Abercrombie
U.S. Rep. Glenn Poshard	163	Poshard
U.S. Rep. James H. Quillen	168	Quillen
U.S. Rep. Charles H. Taylor	169	Taylor
U.S. Rep. James A. Traficant, Jr	144	Traficant
U.S. Sen. William S. Cohen	199	Cohen
U.S. Sen. John Kerry	68	Kerry
U.S. Sen. Carl Levin	332	Levin
U.S. Sen. Carol Mosley-Braun	341	Mosley-Braun/ Simon
U.S. Sen. Paul Simon	341	Mosley-Braun/ Simon
U.S. Watch Producers in the U.S. Virgin Islands	192	Watch Producers
Union Label & Service Trades Dept., AFL–CIO	48	AFL–CIO/ ULSTD
United Auto Workers	93, 174	UAW
United States Apparel Industry Council	24	USAIC
United Technologies Carrier	94	UTC
Van Hoosier, Gary	267.	
Van Put, K	116.	
Varney, Earl D	264.	
Vaughan, Peter S. III	148.	
Vaughn & Bushnell Manufacturing	97, 191	Vaughn & Bushnell
Vereide, Christopher A	3.	
Villarreal, Chris J	8.	
Vogel, Arthur P	269.	
Walker, Douglas L	201.	
Weider, Evelyn	286.	
Welch, William L	245.	
Weldbend Corp	190	Weldbend
Werner Co	129	Werner
West, Fred C	260.	
Western Forge Corp	49	Western Forge
Whalen, Karen	277.	
Whalen, Tom	310.	
Whirlpool Corp	54	Whirlpool
White, Frank	257.	
Whitfield, R. H	206.	
Whittaker, Robert A	1.	
Wicart, John C	10.	
Wilkins, Alfred J. Jr	323.	
Wright Tool	40	Wright
Wright, George H. & Martha M	219.	
Writing Instrument Manufacturers Association, Inc	133	WIMA
Wujek, Peter M	209.	
Zgone, Thomas	237.	

APPENDIX.—LIST OF COMMENTERS—Continued

Name	Comment No.	Citation abbreviation *
Anonymous	66.	
Anonymous	251.	
Anonymous	309.	
Anonymous	322.	
Anonymous	342.	

* Individual consumers are cited by last (or complete) name. Other commenters are cited by the citation abbreviation.

Concurring Statement of Commissioner Roscoe B. Starek, III Regarding Request for Public Comment on Proposed Guides for the Use of U.S. Origin Claims File No. P89–4219

I have voted in favor of issuing the proposed Guides for comment, because I believe that the copy tests discussed in the **Federal Register** notice show that substantial minorities of consumers take contradictory meanings from "Made in USA" claims. In these circumstances, it is appropriate to engage in a form of balancing that may minimize the injury to all consumers from claims inconsistent with their understandings of "Made in USA." The proposed Guides strike the correct balance in recognizing that an unqualified "Made in USA" claim means that a product is substantially all made in the United States. As the proposed Guides make clear, qualified claims may be used to identify U.S. content for products that cannot satisfy a "substantially all" standard. Similarly, stronger claims may be used to identify products that have even higher levels of U.S. content. In any event, however, marketers must substantiate claims for a particular amount of U.S. content with competent and reliable evidence.[1]

The proposed safe harbors and examples should lessen the costs of compliance, although it may be more useful to businesses if the final Guides contain more definitive language in the examples, like the language used in the Green Guides.[2] The examples in the proposed Guides use tentative language to state that an ad or claim is "likely to be deceptive" or "would not likely be deceptive" rather than "is deceptive" or "is not deceptive."[3] Certainly, any advertising or labeling needs to be viewed in context, as the proposed Guides state.[4] The Commission looks at the overall impression created by an ad, and the existence of facts not described in the examples could alter the Commission's interpretation of whether a law violation has occurred. Nonetheless, departure from the more definitive language used in recent Commission interpretations of the FTC Act's requirements for environmental claims may discourage reliance on the proposed Guides. It will be interesting to see any comments that address this issue.

As I have stated on other occasions, I would have preferred to have had the benefit of litigated administrative records, including additional copy test evidence, addressing specific "Made in USA" advertising campaigns in different industries. A majority of this Commission decided to proceed differently. Over time we will know if this undertaking—when combined with a consumer and business education campaign—reduces confusion, encourages compliance, and provides consumers with more information on which to base their purchasing decisions.

[1] Proposed Guides § VI.B. n.3.

[2] *See* Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260 (using "is not deceptive" or "is deceptive" rather than "is not likely to be deceptive" or "is likely deceptive").

[3] *Compare, e.g.*, Proposed Guides § VIII.B., Examples 1 and 2, *with* Green Guides, 16 C.F.R. § 260.6(b), Examples 1 and 2.

[4] Proposed Guides § VI.A.

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federal register

Wednesday
May 7, 1997

Part III

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1930, et al.
Rural Rental Housing (RRH) Assistance and Processing Requests for Section 515 Rural Rental Housing (RRH) Loans; Interim and Final Rules and Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1930, 1944, 1951, and 1965

RIN 0575–AC15

Rural Rental Housing (RRH) Assistance

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Rural Rental Housing (RRH) program to implement legislative reforms mandated by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Public Law 104–180, enacted August 6, 1996 (hereinafter referred to as the Act.) The following revisions are included in this rule: Prioritization of assistance; assurances that the amount of assistance provided is no more than is necessary; assurance that project transfers are in the best interest of the tenants and the government; elimination of the occupancy surcharge; changes to the equity loan program; and implementation of penalties for equity skimming by project owners and managers. The intended effect of these reforms is to improve the effectiveness of the Section 515 Rural Rental Housing Program.

DATES: The effective date of this interim final rule is May 7, 1997. Written comments must be received on or before July 7, 1997.

ADDRESSES: Written comments may be submitted, *in duplicate*, to the Director, Support Services Division, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue SW, Washington, D.C. 20250. Comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "reforms" in the subject. All written comments will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda Armour or Carl Wagner, Senior Loan Specialists, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, Washington, D.C. 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0047 in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of Use of Interim Final Rule

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with mandatory statutory provisions and any delay would be contrary to the public interest. The Act requires six reforms to the MFH program in direct response to reports issued by the General Accounting Office (GAO), Surveys and Investigations Staff of the House Appropriations Committee, and USDA Office of the Inspector General (OIG). These reports highlighted program deficiencies and the potential for fraud and waste. Congress mandated immediate action on all reforms, and specifically directed the Agency to implement one reform within 60 days through negotiated rulemaking. The Agency was not able to accomplish the 60-day deadline because the negotiated rulemaking process takes an estimated 18 months; however, this provides further documentation of Congress' intent that these regulations be implemented without delay. In addition, the effect of including these reforms in the Agency's appropriation bill precludes the Agency from obligating any loan funds for new construction until the reforms are enacted, with the result being that many very-low and low income families are being denied access to decent, safe and sanitary housing. In addition, our other partners in the development of affordable housing such as state housing financing agencies administering low-income housing tax credits, and other loan and grant programs are adversely affected by the Agency's inability to make loan commitments on jointly financed proposals. And finally, there are provisions of the Act that affect the management of our existing loan portfolio. Their immediate implementation will serve to reduce unnecessary outlays of federal

resources, reduce paperwork burden, improve program performance, and impose stricter penalties on program abusers.

Due to its exigency, this rule also constitutes an emergency for purposes of section 534(c) of the Housing Act of 1949 and thus is an exception to the proposed rulemaking requirements in section 534(a) of the Housing Act of 1949. Comments are being solicited on this interim final rule and will be considered in the development of the final rule.

Programs Affected

The affected programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.405, Farm Labor Housing Loans and Grants, 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Intergovernmental Consultation

This program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Rights Impact Analysis

This document has been reviewed in accordance with RD Instruction 2006–P, "Civil Rights Impact Analysis." It is the determination of RHS that this document complies with the requirements of this Instruction.

Background and Information

The Act included reforms in six areas of the multi-family housing program. Four of the six reforms were directive and could be implemented as enacted without the need for public comment. For example, the Act eliminated occupancy surcharge. Two of the reforms, however, provided for substantive changes in the manner in which MFH loan requests are processed and gave the Secretary administrative discretion in their implementation. The Act required that one of these reforms, determining the amount of assistance necessary to develop the proposed rental housing, be implemented within 60 days through negotiated rulemaking as a means of assuring that the public was both informed and consulted regarding the Agency's intentions and requirements that would impact them as potential users of the program. Unfortunately, such process takes an estimated 18 months and could not be accomplished within the confines of the law (that is, within 60 days of enactment). In order to meet the spirit of negotiated rulemaking, the Agency sought extensive public input through several informal meetings with developers, major housing groups, and Agency personnel so that the Agency would gain a full measure of public input before developing the regulations. The Act further required the Agency to follow 5 U.S.C. 557 if negotiated rulemaking could not be accomplished. Therefore, in accordance with 5 U.S.C. 557, the Agency is publishing the rule for notice and comment.

Following is a discussion of each of the six reforms included in this rule:

(1) Limitation on Project Transfers. If a borrower fails to perform the duties contained in their RHS security instruments, the Agency can authorize the transfer of the property to an operator who is able to protect the housing and the health and safety of the tenants. Borrowers demonstrating a record of substantial noncompliance on one or more projects may be ineligible for financial assistance from the government. Borrowers must be in compliance and operating successfully on loans or be successfully operating on a workout plan in order to qualify for federal assistance. Furthermore, the government must evaluate the proposed costs and impacts associated with rehabilitation efforts. The government is seeking to ensure that rehabilitation costs are reasonable, that the efforts will minimize tenant displacement, and that the community will benefit by achieving decent, safe, sanitary, modest, and affordable housing for very low-, low-, and moderate income rural residents. Since 1994, RHS has taken an aggressive stance toward servicing delinquent and problem borrowers. Delinquencies of 180 days or more have dropped 28%, while the overall program delinquency rate for the past two years has stayed at or near 2.6%, a very low rate for this type of portfolio. The reform amendments formalize the Agency's role in servicing these accounts by stipulating that the Agency will determine if a project transfer is in the best interest of the tenants and the government. 7 CFR part 1965, subpart B, "Security Servicing for Multiple Housing Loans," is revised to implement this provision.

(2) Eliminating the Occupancy Surcharge. Occupancy surcharges were enacted as a mechanism to build an equity reserve fund to defray some of the costs of guaranteed equity takeout loans. The surcharge program adds $2 to the monthly rental rate for each rental unit each year, thereby increasing the amount of rental assistance (RA) RHS must provide tenants who receive RA, and reducing the amount of available RA. The reform amendments eliminated the requirement to collect occupancy surcharges. The elimination of the occupancy surcharge will reduce the amount of RA provided to tenants by nearly $600,000 per month. The Agency is amending 7 CFR part 1951, subpart K, "Predetermined Amortization Schedule System (PASS) Account Servicing;" part 1930, subpart C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients;" and part 1965, subpart B, "Security Servicing for Multiple Housing Loans" to implement these changes. Rural Development Administrative Notice (AN) 3301 (1930–C) was issued on December 18, 1996, to provide guidance to Agency field offices on how to implement the process to repeal the occupancy surcharge. At this time, no determination has been made regarding occupancy surcharges previously collected by the Agency.

(3) Revising the Equity Loan Program. The equity loan program was enacted as an incentive for owners not to prepay their RHS loans and to keep their projects in use as low-and very low-income housing for the full terms of their loans. This rule includes revisions to 7 CFR part 1965, subpart E, "Prepayment and Displacement Prevention of Multi-Family Housing Loans," to implement statutory provisions that allow any owner with a pre-1989 loan to apply for an equity loan. The primary focus of this reform is to ensure that any developer who has restrictive-use provisions currently on its property would not be eligible to receive any incentives, including equity loans, until their existing restrictive-use provisions have expired. An additional change to the statute, to improve program consistency, allows owners with post-1979 but pre-1989 loans to obtain equity loans once their restrictive use period expires. Prior to this statutory change, the program allowed only owners with pre-1979 loans to recover some of their equity through low-interest government loans. A significant number of owners will now become eligible for equity loans with this change once their restrictive use

period expires, but given current and projected funding levels, RHS's ability to finance these loans is severely limited.

The Act also contained language which appeared to make farm labor housing borrowers eligible for equity loans. Specifically, the Act contained language providing authority to make equity loans to farm labor housing borrowers under "section 514(j)" of the Housing Act of 1949. However, section 514(j) of the Housing Act does not pertain to equity loans; it deals specifically with equity skimming penalties for farm labor housing borrowers who abuse rent receipts, physical property, etc. Since the Act did not provide clear authority for equity loans to farm labor housing borrowers, this provision could not be implemented.

(4) Preventing equity skimming by project owners and managers. RHS has implemented numerous administrative measures to prevent owners and managers from defrauding the government by "equity skimming" (misusing rent receipts, physical property, and reserve accounts.) In addition, under current law, owners and managers found defrauding the government may be prevented from doing business with the federal government for a certain number of years (debarment). However, the administration of these measures varies from case to case and depends on the servicing arrangements between the government and the operator. The Act enhances the Agency's ability to deter waste, fraud, and abuse by making equity skimming a criminal offense, punishable by a fine of up to $250,000 or up to 5 years in prison, or both. This provision has been added to 7 CFR part 1930, subpart C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients," and will provide a strong and consistent deterrent to defrauding the government.

(5) Prioritization of Assistance. Prior to the passage of the Act, the Agency used a point system that heavily weighted proposals for projects in areas at least 20 miles from an urban center. This system, designed to ensure that truly rural areas receive housing assistance, was criticized for placing too much emphasis on the proximity of a community to an urban center and not fully reflecting a rural community's need for housing. The new legislation allows the Agency a more proactive role in selecting areas of greatest need based on specific criteria contained in the Act. The regulation, developed with input from program users, contains specific criteria and parameters for selecting areas, provides guidance on optional criteria permitted by the law, and establishes the timing for area selection and for selection of loans within such areas. The Agency has developed a ranking system for selecting and designating places for which loan requests will be invited, based on the following objective measures required by the Act: The incidence of poverty; the lack of affordable housing and the existence of substandard housing; the lack of mortgage credit; and the rural characteristics of the location. Loan requests received for designated places will be scored and ranked using objective criteria developed by the Agency. The highest ranked loan requests within the State's funding levels will be further processed.

(6) Necessary Assistance. Responding to the concern that rural rental housing developers may be earning excessive profits through government subsidies, the reform legislation provides that the Agency can adjust the amount of its loan if excess assistance is being provided. RHS already has in place a provision that each State will enter into a memorandum of understanding (MOU) with state housing agencies agreeing to coordinate the award of program benefits. In developing regulations to implement the reform legislation, input was obtained from program users in determining appropriate caps to use for builder's profit, general overhead, and general requirements; calculation of a maximum allowable developer's fee; the timing of the determination of the amount of necessary assistance; and the process to be used in determining the amount of necessary assistance. The regulations will require an evaluation of the subsidy being provided to the proposed project, using a computer-based analysis. That evaluation will be shared with the state housing finance agency providing tax credits and with other participants in the financing of the proposal. If indicated by the evaluation, RHS will work with other participants to reduce their contribution, or as a final step, will reduce the amount of RHS resources to ensure that excess assistance is not provided.

This rule also makes other minor revisions and clarifications of a housekeeping nature, such as correcting certain references to applicable Civil Rights legislation or regulatory cross-references.

Implementation Proposal

This rule changes the manner in which multi-family housing loan requests are processed; adds provisions to ensure that the amount of assistance provided is no more than is necessary; reinforces the Agency's role in project transfers; eliminates the occupancy surcharge; revises the equity loan parameters; and institutes measures to prevent equity skimming. All provisions of the rule become effective the date of publication of this interim final rule. Loan requests on hand and existing loans will be reviewed for compliance with the revised regulations.

Concurrently, upon publication of this rule, the Agency will discontinue its priority point system and change to a NOFA (Notice of Funds Availability) system which is published elsewhere in this issue of the **Federal Register**. Under the NOFA system, the amount of available funds and application deadlines will be announced each funding cycle in the **Federal Register.** Loan requests will be reviewed and selected based on objective criteria in accordance with the new regulations; loan requests not selected for funding will be returned to the applicant.

The Agency intends to fund eligible loan requests on hand that were issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application prior to November 7, 1996 (the date Agency staff were advised that no further AD–622s be issued pending implementation of the new statutory provisions), in date order of complete application received, provided the applications comply with the new statutory requirements and are in designated areas in accordance with the new regulations. In these instances, the Agency will not invite further loan requests for designated areas where a loan request has been issued an AD–622. Since regulations in effect prior to this rulemaking action allowed States to authorize applications up to either 150 or 200 percent of their annual allocation, existing applications will be considered until the beginning of FY 1999. At that time, any remaining outstanding applications authorized prior to November 7, 1996, which have not been reached for funding will be returned to the applicant.

Loan requests that have been issued an AD–622 inviting a formal application that are not located in a designated place in accordance with the new requirements will be returned to the applicant. The Agency recognizes the impact on applicants thus affected; however, we are mandated by Congress to institute measures to ensure assistance is provided only to those rural areas with the greatest need.

Loan requests on hand that have not been issued an AD–622 inviting a formal application will be returned to the applicant. Loan requests thus

returned may, of course, be submitted for consideration with other loan requests when the availability of funds is announced, if they are located in communities on the State's list of designated places.

List of Subjects

7 CFR Part 1930

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rent subsidies, Rural areas.

7 CFR Part 1951

Accounting, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1965

Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

1. 7 CFR chapter XVIII is amended by revising the word "preapplication" to read "loan request" in the following places:

a. Part 1944, § 1944.211(a)(13)(i)
b. Part 1944, introductory text of § 1944.213(b)
c. Part 1944, § 1944.213(d)(1)(i)
d. Part 1944, § 1944.213(d)(1)(ii)
e. Part 1944, § 1944.224(a)(4)
f. Part 1944, § 1944.224(a)(6)
g. Part 1944, § 1944.224(a)(7)
h. Part 1944, introductory text of § 1944.235(h)
i. Part 1944, subpart E, Exhibit A, paragraph IV.B.4.
j. Part 1944, subpart E, Exhibit A, paragraph IV.B.22.
k. Part 1944, subpart E, Exhibit A–7, paragraph I.A.(4)
l. Part 1944, subpart E, Exhibit E, paragraph III
m. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.A.
n. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.B.
o. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.D.
p. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.E.
q. Part 1944, subpart E, Exhibit E, paragraph VII

2. 7 CFR chapter XVIII is amended by removing the words ", occupancy surcharge" in the following places:

a. Part 1930, subpart C, Exhibit B, paragraph XIII.C.2.f(1)
b. Part 1951, § 1951.517(b)(4)(i)(A)
c. Part 1951, § 1951.517(b)(4)(i)(B)
d. Part 1951, § 1951.517(b)(4)(ii)(A)
e. Part 1951, § 1951.517(b)(4)(ii)(B)
f. Part 1951, § 1951.517(b)(4)(iii)

3. 7 CFR chapter XVIII is amended by removing the words "and occupancy surcharge" in the following places:

a. Part 1930, subpart C, Exhibit B, introductory text of paragraph XIV.A.5.b
b. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(i)(A)—2 times
c. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(i)(B)
d. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(2)(vi)(A)—2 times
e. Part 1930, subpart C, Exhibit B–1, paragraph 4.b
f. Part 1930, subpart C, Exhibit B–1, heading of paragraph 6
g. Part 1930, subpart C, Exhibit B–1, paragraph 6.a
h. Part 1930, subpart C, Exhibit E, paragraph II.A.2

4. 7 CFR chapter XVIII is amended by removing the words "or occupancy surcharge" in part 1951, § 1951.506(a)(3).

5. 7 CFR chapter XVIII is amended by removing the words ", as well as the occupancy surcharge" in the following places:

a. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(v)(C)
b. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(2)(iv)

PART 1930—GENERAL

6. The authority citation for part 1930 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

7. Section 1930.105 is amended by revising paragraph (b)(10) to read as follows:

§ 1930.105 Objective of management and supervision.

* * * * *

(b) * * *

(10) Operate the facilities according to applicable Civil Rights laws, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975.

* * * * *

8. Section 1930.106 is added to read as follows:

§ 1930.106 Project operations.

Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Whoever willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property for unauthorized purposes is subject to penalty. This includes an owner, agent, or manager, or person who is otherwise in custody, control, or possession of property that is security for a multi-family housing loan. Those violating these provisions are subject to penalties set out under Agency regulations and the law. Under law (42 U.S.C. 1484 and 1485), federal penalties consisting of fines of not more than $250,000 or imprisonment of not more than five years, or both, may be imposed for operating a project in a manner inconsistent with the provisions of this section.

9. Subpart C, Exhibit B is amended in paragraph II by removing the definition of "Occupancy surcharge" and by removing the words ", including occupancy surcharge," in the definition of "Tenant contribution"; in paragraph V F 1 a by removing the last sentence; in paragraph V F 1 b by removing the last sentence; in paragraph VII F 6 (c) in the second sentence by removing the words "as well as maximum occupancy surcharge"; in paragraph VII F 6 d in the third sentence by removing the words "and occupancy surcharges"; by removing paragraph VIII A 3; by redesignating paragraphs VIII A 4 through VIII A 8 as paragraphs VIII A 3 through VIII A 7 respectively; in the introductory text of paragraph VIII B by revising the words "paragraphs 1, 4b, 4d, 4e, 5, and 7" to read "paragraphs VIII B 1, VIII B 4 b, VIII B 4 d, VIII B 4 e, VIII B 5, and VIII B 7;" in paragraph VIII B 4 by revising the word "Occupancy" to read "Cooperative occupancy" and by revising the words "paragraphs VII B 4 b, d, and e" to read "paragraphs VIII B 4 b, VIII B 4 d, and VIII B 4 e"; in paragraph VIII D 2 by removing the words ", including occupancy surcharge levied, if any"; in paragraph XIII B 2 a (2) by removing the words "occupancy surcharge monies,"; in paragraph XIII B 2 a (3) by removing

the words "including occupancy surcharge"; in paragraph XIV A 5 b (1) (i) (B) by removing the words "or to pay the occupancy surcharge"; in paragraph XIV A 5 b (2) (vi) (B) by removing the words "or the occupancy surcharge"; in paragraph XIV A 5 B(1)(I)(b) by removing the words "or to pay the occupancy surcharge"; in paragraph XIV A 5 b (2) (vi) (C) by removing the words "and reimbursement for occupancy surcharge"; and in paragraph II by revising the definition of "Shelter cost" to read as follows:

EXHIBITS TO SUBPART C

* * * * *

EXHIBIT B—MULTIPLE HOUSING MANAGEMENT HANDBOOK

* * * * *

II * * *

Shelter cost. Consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to part 1944, subpart E, Exhibit A–6, of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

* * * * *

10. Subpart C, Exhibit E is amended by revising paragraph II K to read as follows:

* * * * *

EXHIBIT E—RENTAL ASSISTANCE PROGRAM

* * * * *

II * * *

K *Shelter cost.* The approved shelter cost consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to §1930.122(b)(1). Utility allowances, when required, are determined and approved according to part 1944, subpart E, Exhibit A–6, of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart.

* * * * *

PART 1944—HOUSING

11. The authority citation for part 1944 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.205 is amended in the definition of "Rural area" by revising the words "§1944.10 of subpart A of part 1944 of this chapter" to read "§3550.10 of this title" and by adding in alphabetical order definitions to read as follows:

§1944.205 Definitions.

* * * * *

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers Section 515 loans and Section 521 rental assistance.

* * * * *

Census Designated Place (CDP). An unincorporated population center identified by the Census Bureau.

* * * * *

Consolidated Plan. A plan developed by a community or state addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

* * * * *

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

LIHTC. Low-income housing tax credits.

* * * * *

MFH. Multi-Family Housing.

* * * * *

NOFA. Notice of funds availability.

* * * * *

RCH. Rural Cooperative Housing.

* * * * *

RHS. Rural Housing Service.

RRH. Rural Rental Housing.

* * * * *

Section 515. Section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485 *et seq.*).

* * * * *

§ 1944.213 [Amended]

13. Section 1944.213 is amended in the introductory text of paragraph (b) in the second sentence by revising the words "§1944.231(k)" to read "§1944.231(h)", and in the third sentence by removing the words "Form AD–622, 'Notice of Preapplication Review Action,' or any other"; in the introductory text of paragraph (d) in the first sentence by revising the words "preapplication for a loan" to read "loan request" and adding the words "and the environmental requirements of part 1940, subpart G, of this chapter" following the words "of this subpart" and in the second sentence by removing the word "preapplication"; and by revising paragraph (a), the heading of paragraph (f), and paragraphs (f)(2)(i) and (f)(3) to read as follows:

§1944.213 Limitations.

(a) *Loan limits.* The Agency must certify that assistance provided any housing project is not more than is necessary to make the project affordable to potential tenants and the Government. The applicant must disclose, during each stage of the process, all other assistance proposed for the project, including all other government assistance as defined in §1944.205.

(1) *Fee norms.* RHS has established the fee norms below for purposes of analysis. The total of the three fees may not exceed 21 percent.

(i) Builder's profit: up to 10% of the construction contract.

(ii) General overhead: up to 4% of the construction contract.

(iii) General requirements: up to 7 % of the construction contract.

(iv) Developer's fee: up to 15% of the total development costs authorized for tax credit purposes on new construction or rehabilitation; up to 8% of the acquisition costs only for the acquisition rehabilitation costs.

(2) *Other fee norms.* (i) RHS has established the new construction and rehabilitation fee norm for a developer's fee at up to 15% of the total development cost authorized for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(ii) For transfer proposals that include acquisition costs, RHS has established the developer's fee on the acquisition costs at up to 8% of the acquisition costs only when authorized by the state agency and only for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(3) *Analysis of loan requests to determine the minimum amount of assistance.*

(i) The fee structure of the state agency administering low-income housing tax credits will be used in the RHS analysis of the amount of assistance that is necessary for a proposal.

(ii) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of $25,000 or 1 percent of the total development cost as authorized by the state agency), RHS will consult with the applicant, as well as with the state agency, to strive to reach an agreement for reducing the excess assistance.

(iii) In the event that excess assistance is not reduced through an agreement with the applicant, RHS will adjust the amount of equity contribution by the amount of excess assistance (through the reduction of the loan) to ensure that assistance provided is not more than is

necessary to provide affordable housing after taking into account assistance from all Federal, state and local sources.

* * * * *

(f) *New loans in areas with RHS, the Department of Housing and Urban Development (HUD), or similar type rental housing assistance.*

* * * * *

(2) * * *

(i) Another RRH or RCH loan request in the same market area has been selected for further processing; or

* * * * *

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria in paragraph (f)(2) of this section, loan requests in the same market area will be returned to the applicant in accordance with §1944.231. This does not affect the processing of loan requests in other market areas.

* * * * *

§ 1944.215 [Amended]

14. Section 1944.215 is amended in paragraph (a)(1) in the ninth sentence by removing the word "preapplication" and by revising the words "in this paragraph" to read "in accordance with §1944.213(a)(1)(iii) and (a)(1)(iv)" and by removing the last three sentences; in paragraph (r)(1) by adding the words ", persons with disabilities," following the words "elderly persons"; in paragraph (r)(2) by revising the words "should promote an equal opportunity" to read "are to promote equal access"; in the introductory text of paragraph (r)(4) by revising the words "priority points" to read "preference"; in paragraph (r)(4)(i) by revising the words "meets all FmHA or its successor agency under Public Law 103–354 site criteria" to read "meets the site criteria of this paragraph (r) and the environmental requirements of part 1940, subpart G, of this chapter"; in the last sentence of paragraph (r)(4)(ii) by revising the words "additional priority points" to read "preference"; in paragraph (r)(4)(vii) by revising the words "§ 1944.231(i)(6)" to read "§ 1944.231(e)"; and in paragraph (r)(7) by revising the words "§ 1944.10 of subpart A of part 1944 of this chapter" to read "7 CFR 3550.10", by revising the word "preapplications" to read "loan requests", and by removing the phrase ", including rating and ranking for potential authorization".

§ 1944.224 [Amended]

15. Section 1944.224 is amended in the introductory text of paragraph (a)(5) in the second sentence by revising the words "paragraph III of exhibit J of subpart C of part 1930 of this chapter" to read "part 1930, subpart C, exhibit J, paragraph V, of this chapter".

16. Section 1944.228 is added to read as follows:

§1944.228 Ranking of rural places based on greatest need for Section 515 housing.

The Agency will rank rural places based on greatest need for Section 515 housing in accordance with this section. Places may be incorporated population centers such as cities, boroughs, towns, and villages; or unincorporated population centers identified by the Census Bureau (known as Census Designated Places (CDPs)). States must be consistent state-wide in their use of place types that are included in the list of designated places. Ranking will be based on the following:

(a) Qualifies as a rural area in accordance with 7 CFR 3550.10.

(b) Lacks mortgage credit for borrowers in accordance with §1944.211(a)(2).

(c) Demonstrates a need for multi-family housing based on the following factors, with equal weight given to each. Data for this purpose will be provided to States by the National Office from the most recent rural place data obtained from the Census Bureau. If Census data is not available for an eligible rural place, the State may request authority from the National Office to include the place on the list of designated places established in accordance with § 1944.229, provided the place meets the requirements of § 1944.229(b) and it can be demonstrated that there is a high need for assisted multi-family housing based on information obtained from reliable local or state sources. The State may request authority from the National Office to use other state-wide data if it is objective and consistent with the Housing Act of 1949, as amended.

(1) The incidence of poverty, measured by determining households below 60 percent of the county rural median income.

(2) The existence of substandard housing, measured by determining the number of occupied housing units that lack complete plumbing or have more than one occupant per room.

(3) The lack of affordable housing, measured by determining households below 60 percent of county rural median income paying more than 30 percent of income in rent.

17. Section 1944.229 is added to read as follows:

§ 1944.229 Establishing the list of designated places for which Section 515 applications will be invited.

States will compile a list of designated places for which Section 515 applications will be invited, in accordance with the provisions of this section and the ranking process described in § 1944.228. Inclusion on the list of designated places does not indicate that market need and demand has been established; this will be a loan feasibility determination. Once placed on the list of designated places, places will be considered equal, with no regard to their ranking on the ranking list or order of selection. In exceptional circumstances, there may be an instance when a place with an urgent need for multi-family housing is not reflected in the ranking process in § 1944.228; for example, a place that has had a substantial increase in income-eligible population since the most recent decennial Census data because of a new industry, a place that has experienced a loss of affordable housing because of a natural disaster, or a community within the limits of an Indian reservation or tribal alloted or trust land with a demonstrated need for multifamily housing. With concurrence from the National Office, the State may include the place on the list of designated places.

(a) *Establishing the number of designated places.* Initially, the number of designated places may equal up to 5 percent of the state's total eligible rural places ranked in accordance with § 1944.228, but must equal, in all cases, at least 10 places. For example, in a state with 1,000 total rural places, the State may designate up to 5 percent, or 50 places. However, in a state with 60 total rural places, the State would use the minimum number of 10 places, since 5 percent of 60 equals 3. In states where 5 percent equals more than the minimum number of 10, consideration in determining the number of places to include on the list should be given to the size and population of the state, funding levels, and the potential for leveraging. States that anticipate high loan activity because of leveraging may designate a number of places higher than 5 percent or the minimum 10 places with the concurrence of the National Office.

(b) *Requirements for inclusion on the list of designated places.* Places selected for the list of designated places:

(1) Must have 250 or more households as a minimum feasibility threshold for multi-family housing; and

(2) May not have any of the "build and fill" conditions described in § 1944.213(f)(2). Places thus identified will be deferred for inclusion on the current year's list of designated places. Deferred places will be reviewed annually and, at such time that the "build and fill" conditions no longer

exist, will be considered for inclusion on the list for the next fiscal year in accordance with this section. To the extent practicable, States will consult with HUD and other state or local agencies or entities that provide very low- or low-income rental housing to determine places where loan proposals have been approved or are in process.

(c) *Selection of designated places.* Places meeting the requirements of paragraph (b) of this section will be selected from the ranking list as follows:

(1) At least 90 percent of the State's total designated places must be selected in rank order from the list.

(2) With concurrence from the National Office, up to 10 percent of the State's designated places may be selected in accordance with the following guidelines: *Provided,* That such places fall within the top-ranked 10 percent of the state's total rural places (or a minimum of 20 places) meeting the requirements of paragraph (b) of this section. For example, in a state with 1,000 total rural places, the State has elected to select designated places equal to the maximum 5 percent, or 50 places. Of the 50 places, at least 90 percent, or 45 places, must be selected from the places that meet the requirements of paragraph (b) of this section in order of their ranking. Up to 10 percent, or 5 places, may be selected from the top-ranked 100 places (10 percent of the total rural places in the state) that meet the requirements of paragraph (b) of this section, as follows:

(i) Places that provide geographic diversity in the state. Places thus selected must be the highest ranked place in each geographic division designated by the State. Geographic divisions must correspond with established State divisions, such as districts, regions, or servicing areas.

(ii) Places that have been identified as high need areas for multi-family housing in the state Consolidated Plan or similar state plan or needs assessment report.

(d) *Length of designation.* Places will remain on the list of designated places for three years or until a loan request is selected for funding, whichever occurs first. A place where a loan request is selected for Section 515 funding will be reevaluated for potential inclusion on the next fiscal year's list of designated places when the complex is completed, in accordance with the "build and fill" provisions of § 1944.213(f)(2). A place may be removed from the list prior to the end of the 3-year designation period because of a substantial loss of income-eligible population or an increase in the affordable rental housing supply, for example, a place that experiences the closing of a military base or other major employer.

(e) *List of designated places.* A list of designated places may be obtained by contacting the State Office or any Rural Development office in the state.

18. Section 1944.230 is added to read as follows:

§ 1944.230 Application submission deadline and availability of funds.

(a) *Application submission and funding cycle.* Dates governing the submission and funding cycle of Section 515 loan requests will be published annually in the **Federal Register** and may be obtained from any Rural Development office.

(b) *Availability of funds.* The amount of funds available for each State, as well as any limits on the amount of individual loan requests, will be published as a notice annually in the **Federal Register.**

19. Section 1944.231 is revised to read as follows:

§ 1944.231 Processing loan requests.

(a) *Actions by the applicant.* Loan requests may be submitted for designated areas when the availability of funds is announced. The loan request will consist of an application form prescribed by the Agency and the items listed in Exhibit A–7 of this subpart. If an application is selected, the applicant will be required to provide the additional items required by Exhibit A–9 of this subpart within the timeframes established by the Agency.

(b) *Actions by the Agency.*—(1) *Actions by the Agency on loan requests received.* Loan requests received after the deadline announced in the **Federal Register** will not be considered for funding in that funding cycle and will be returned to the applicant.

(2) *Review and scoring of loan requests.* Loan requests will be reviewed:

(i) To determine if the loan request is complete and includes the additional information required in NOFA;

(ii) To determine if the request is for an authorized purpose; and

(iii) To establish a point score based on the following factors:

(A) The presence and extent of leveraged assistance (including services, abatement of taxes, etc.) for the units that will serve RHS income-eligible tenants, not including tax credits or donated land. Scoring will be based on the presence and extent of leveraged assistance for each loan request compared to the other loan requests being reviewed, computed as a percent of the total development cost of the units that will serve RHS income-eligible tenants. A total monetary value will be determined for leveraged assistance in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. (0 to 20 points)

(B) The loan request is for units to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the state Consolidated Plan or state needs assessment as a high need community for multi-family housing. (20 points)

(C) The loan request is in support of a National Office initiative announced in NOFA. (20 points)

(D) The loan request is in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with state-administered housing programs such as HOME funds or low income housing tax credits.

A factor thus developed cannot duplicate factors already included in this paragraph and must be provided to the National Office prior to the funding cycle for concurrence and inclusion in NOFA. (20 points)

(E) The loan request includes donated land meeting the provisions of § 1944.215(r)(4). (5 points)

(3) *Point score ties and ranking of loan requests.* Loan requests will be ranked in order of highest point score or, where there are point score ties, in order of highest point score and number assigned as follows:

(i) If one of the same-pointed requests is from an entity meeting the requirements of paragraph (e) of this section, it will be denoted with a #1 following the point score. If two or more are from entities meeting these requirements, a lottery will be held. The first drawn request will be denoted #1, the second drawn #2, etc.

(ii) After all requests from entities meeting the requirements of paragraph (e) of this section have been numbered, the next sequential number will be assigned to a loan request from an entity not meeting the requirements of paragraph (e) of this section. If there are two or more requests from entities not meeting the requirements of paragraph (e) of this section, a lottery will be held and each request numbered in the order it is drawn, beginning with the next sequential number.

(4) *Preliminary eligibility and feasibility review.* In order of ranking, a preliminary review of eligibility and

feasibility will be made on the highest ranked requests, including:

(i) A review of the preliminary plans and cost estimates.

(ii) A market feasibililty review, including the Agency's review of the market, a review of HUD's (and similar lender's, if applicable) feedback on the market area, and a review to ensure compliance with the "build and fill" provisions of §1944.213(f).

(iii) A site visit and preliminary review to determine if the site criteria of §1944.215(r) can be met.

(iv) A review of the Affirmative Fair Housing Marketing Plan.

(v) Analysis of a current (within 6 months) credit report.

(5) *Selection of loan requests for further processing.* The Agency will select loan requests for further processing from loan requests determined preliminarily eligible and feasible, in ranking order, taking into consideration the amount of available funds.

(i) If any selected loan requests are later withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will select additional loan requests in ranking order as funding levels permit. For this purpose, the State may keep the next highest ranked loan request until it is determined that all selected loan requests will be funded. Applicants whose loan requests are held for this purpose will be advised that their loan request was not selected but ranked sufficiently high to be retained in the event a selected request is withdrawn or rejected in the current funding cycle.

(ii) Loan requests not funded in the funding cycle, including incomplete requests, or requests not meeting the requirements of Exhibit A–7 of this subpart or NOFA, will be returned to the applicant with the reason it was not considered.

(c) *Additional requirements for selected loan requests.* For selected loan requests, the applicant must provide the additional information required by Exhibit A–9 of this subpart and any additional State requirements within the timeframes established by the Agency. If the applicant fails to meet established timeframes, the Agency may grant an extension if the delay appears reasonable and granting the extension will still permit funding of the loan request in the current funding cycle.

(d) *Site rejections.* Site rejections will be handled as follows:

(1) Applicants will be given 15 calendar days from the date of the Agency's site rejection letter to submit a new site option. If the applicant appeals the decision but submits a new site option within 15 days, the new site option will be accompanied by a copy of their letter to the National Appeals Division withdrawing their appeal request. If the new site is acceptable, processing will continue. If the new site is not acceptable, the loan request will be rejected.

(2) If the applicant does not submit a new site option within 15 days, and has appealed the Agency's decision, the Agency will not delay processing of loan requests in other market areas pending the outcome of the appeal. The next ranked loan request, within available funding limits, will be selected for further processing.

(3) If the applicant prevails in the appeal, the loan request will be considered in the next funding cycle. The applicant will be given the opportunity to amend their loan request consistent with NOFA.

(e) *Nonprofit or public body preference.* Preference in ranking loan requests will be provided to an entity that meets all of the following conditions:

(1) Is a local nonprofit organization, public body, or Indian Tribe whose principal purposes include the planning, development, and management of low-income housing;

(2) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (26 U.S.C. 501(c)(3) or 501(c)(4));

(3) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(4) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(5) Is not co-venturing with another entity; and

(6) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(f) *RCH loan requests.* (1) Loan requests for RCH assistance will be processed in the order in which a complete loan request was received.

(2) All loan requests for RCH assistance will be reviewed for eligibility and feasibility. In cases where the proposal is not eligible or feasible, the proposal will be rejected. Proposals which appear eligible and feasible will be forwarded to the National Office for review and authorization.

(3) If authorized by the National Office, the State will notify the applicant that the proposal appears eligible and feasible. The applicant will be requested to provide the additional information required by Exhibit A–9 of this subpart and any additional State requirements.

(4) If funds are not available in the current funding cycle, the loan request will be considered for funding in the next funding cycle.

(g) *General guidance on processing requests for Multi-Family Housing (MFH) Assistance.* (1) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(2) A loan request for MFH assistance may be withdrawn upon written request of the applicant at any time. The Agency may withdraw a loan request for failure of an applicant to provide necessary information to process a request for assistance should the applicant fail to respond to a written request which provides the applicant with a reasonable time period to submit the information.

§ 1944.237 [Amended]

20. Section 1944.237 is amended in paragraph (a) in the second sentence by revising the words "be rated and ranked" to read "compete for funding" and by removing the words "the priority point system contained in", and in the last sentence by removing the words "under the priority point system".

21. Exhibit A of subpart E is amended in section IV. A. in the first sentence by revising the words "When an applicant is authorized to submit a formal application" to read "When a loan request is selected for further processing"; in the introductory text of section IV. B. in the last sentence by revising the word "preapplication" to read "loan request" and the words "when developing an application" to read "for loan requests selected for further processing"; and in section VIII in the contents listing for exhibit A–7 by revising the word "Preapplication" to read "a Loan Request", in the contents listing for exhibit A–9 by adding the word "Additional" before the word "Information", by removing the words "with Application", and by revising the word "Loans" to read "Loan Requests", and by removing and reserving the contents listing for Exhibit A–10; and by revising sections II. and III. to read as follows:

Exhibits to Subpart E

EXHIBIT A—HOW TO BRING RENTAL AND COOPERATIVE HOUSING TO YOUR TOWN

* * * * *

II. APPLYING FOR A LOAN

A. An individual, organization, or group organizing to provide housing may contact any Rural Development office processing Section 515 loan requests to obtain

information and necessary forms. The Section 515 program is administered by Rural Development's Rural Housing Service (RHS).

B. Each funding cycle, RHS will publish in the **Federal Register** a notice of the availability of funds (NOFA) for Section 515 loans and a list of designated places (communities) for which loan requests may be submitted. The list of designated places is also available from any Rural Development office processing Section 515 loan requests. Designated places are rural places identified by RHS as having the greatest potential need for Section 515 housing. Except in unusual circumstances, places are designated for a period of three years or until a loan has been selected for funding, whichever occurs first.

C. Applicants must submit a loan request by the deadline announced in the **Federal Register**, and available in any Rural Development office, to be considered in the funding cycle. Section III of this exhibit provides information on the loan review and selection process. In addition, applicants are advised to read this subpart, which provides detailed information on the Section 515 program.

D. The loan request consists of SF–424.2, "Application for Federal Assistance (For Construction)," the supporting material or information listed in exhibit A–7 of this subpart, and any additional information required in NOFA. This information will enable the Agency to determine:

1. The eligibility of the applicant;

2. The feasibility (economic, environmental, and architectural) of the proposed housing;

3. That prospective cooperative members have read and understand their responsibilities as outlined in "What is Cooperative Housing?" (available in any Rural Development office) before agreeing to a cooperative housing project;

4. Whether the proposed housing can appropriately be financed by RHS; and

5. Its Civil Rights impact.

E. This information usually can be furnished by the applicant without hiring extensive professional services. However, fees for professional packaging services rendered to a nonprofit organization can be made a part of loan development costs.

III. REVIEW OF THE LOAN REQUEST

A. Loan requests received by the deadline announced in the NOFA will be reviewed, scored, and ranked based on the loan selection criteria announced in the NOFA. Requests that rank sufficiently high will be reviewed for eligibility and feasibility.

B. Upon completion of the loan review process, applicants will be advised of RHS' decision. Applicants whose loan requests are selected for further processing will be notified of the additional steps that need to be taken. Loan requests not selected for further processing in the current funding cycle will be returned to the applicant.

* * * * *

22. Exhibit A–7 of subpart E is amended in the introductory text by removing the words "(for preapplication submission)"; in paragraph I.A.(6) by removing the last sentence; in paragraph I.A.(7)(A) by removing the words "preapplication or"; and by revising the heading of the exhibit and paragraphs IV.C. and VI to read as follows:

* * * * *

EXHIBIT A–7—INFORMATION TO BE SUBMITTED WITH A LOAN REQUEST FOR A RURAL RENTAL HOUSING (RRH) OR A RURAL COOPERATIVE HOUSING (RCH) LOAN

* * * * *

IV. * * *

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc., and a justification for any related facilities to be financed wholly or in part by RHS funds.

* * * * *

VI. *Form RD 1940–20, "Request for Environmental Information."*

* * * * *

23. Exhibit A–9 of subpart E is amended by removing the introductory text; in paragraph 5 by revising the words "since the applicant submitted the market analysis" to read "since the market analysis was completed"; by removing paragraph 15 and by redesignating paragraph 16 as paragraph 15; and by revising the heading of the exhibit and paragraph 10 to read as follows:

* * * * *

EXHIBIT A–9—ADDITIONAL INFORMATION TO BE SUBMITTED FOR RURAL RENTAL HOUSING (RRH) AND RURAL COOPERATIVE HOUSING (RCH) LOAN REQUESTS

* * * * *

10. The applicant will submit all proposed agreements for architectural, engineering, and legal services.

* * * * *

EXHIBIT A–10—[REMOVED AND RESERVED]

24. Subpart E, Exhibit A–10, is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

25. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.504 [Amended]

26. Section 1951.504 is amended by removing the alphabetic paragraph designations and placing the definitions in alphabetical order and by removing the definition for "Occupancy surcharges".

§ 1951.506 [Amended]

27. Section 1951.506 is amended by removing paragraph (a)(5)(iv); by redesignating paragraph (a)(5)(v) as paragraph (a)(5)(iv); and in newly redesignated paragraph (a)(5)(iv) in the third sentence by removing the words ", occupancy surcharges" and in the fourth sentence by removing the words ", occupancy surcharge".

§ 1951.509 [Removed]

28. Section 1951.509 is removed and reserved.

Exhibit B—[Removed and Reserved]

29. Part 1951, subpart K, Exhibit B, is removed and reserved.

PART 1965—REAL PROPERTY

30. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Security Servicing for Multiple Housing Loans

31. Section 1965.65 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) *General.* The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very-low, low, and moderate income families or persons and would be in the best interests of the residents and the Federal Government.

* * * * *

§ 1965.68 [Amended]

32. Section 1965.68 is amended by removing paragraph (c)(9).

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

33. Section 1965.210 is revised to read as follows:

§ 1965.210 Loans approved prior to December 15, 1989—RHS actions when processing prepayment requests.

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with

the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart (available in any Rural Development State or District Office) will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired.

§ 1965.213 [Amended]

34. Section 1965.213 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c) and (d) respectively; and by adding a new paragraph (a) and by revising the introductory text of newly redesignated paragraph (b) and paragraph (b)(1) to read as follows:

§ 1965.213 Offer of incentives to borrowers.

* * * * *

(a) *Availability of incentives.* Incentives may be offered only if the restrictive period has expired for any RRH project loan.

(b) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart (available in any Rural Development State or District Office).

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the servicing official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants.

* * * * *

Dated: May 1, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–11817 Filed 5–6–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575–AB93

Processing Requests for Section 515 Rural Rental Housing (RRH) Loans

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for processing loan requests for Rural Rental Housing (RRH) assistance. This action is taken to improve loan processing procedures to better accomplish the program's purpose of providing rental housing to rural areas of greatest need.

In a future rulemaking document the comment period will be reopened for the proposed market study revisions (Exhibit A–8 of 7 CFR part 1944, subpart E) only.

DATES: The effective date of this final rule is June 6, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, Washington, D.C. 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0047, in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements.

Civil Justice Reform

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

RHS has recognized the need to revise the manner in which Section 515 loan proposals are selected for processing to ensure that affordable rental housing reaches areas of the greatest need. This resulted from internal reviews by the Agency and reports from the General Accounting Office, the USDA Office of the Inspector General (OIG), and the Surveys and Investigations Staff of the House Committee on Appropriations. In response to such findings, RHS published a proposed rule on January 17, 1996 (61 FR 1153). This rule proposed changes to the manner in which loans were selected for funding and complied with statutory provisions of the Housing Act of 1949 at that time. In addition, other program enhancements were proposed to improve the quality of loan underwriting. Since publishing the proposed rule, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Public Law 104–180 (herein referred to as the Act) was enacted on August 6, 1996. The Act amended the Housing Act of 1949 and revised the manner in which RHS selects loan proposals. The provisions of the Act conflicted with many of the revisions contained in the proposed rule. As a result, the Agency is not implementing the changes affecting the priority point system which were initially proposed on January 17, 1996.

In a separate rulemaking document, published elsewhere in this issue of the **Federal Register**, RHS is implementing the provisions of the Act. These changes are effective upon publication.

This rulemaking document implements the other program enhancements proposed on January 17, 1996, which were not affected by the Act. This rulemaking action is effective June 6, 1997.

RHS is also publishing elsewhere in this issue of the **Federal Register** a Notice of Funding Availability (NOFA) announcing the application requirements for Fiscal Year 1997 Section 515 funding. Applicants for the Section 515 program should be aware that, although the implementation dates are staggered, the provisions of both rulemaking provisions published this date in the **Federal Register** and the provisions contained in the NOFA will apply to any Section 515 loan request to be processed in FY 1997.

Implementation Proposal

This rule includes provisions pertaining to applicant eligibility and loan processing procedures that affect loan proposals in process. All pending loan requests to be processed in FY 97 will be reviewed for compliance and eligibility based on this regulation. Details of the provisions adopted in this rule are given in the "Discussion of Comments" section.

Discussion of Comments

The proposed rule was published in the **Federal Register**, 61 FR 1153, on January 17, 1996, with a 60-day comment period that ended March 18, 1996. Nineteen comments were received during the comment period from RHS personnel, developers, attorneys, housing advocacy groups, and others.

As previously discussed, the revisions to the point system will not be implemented because of recent legislation that directs the Secretary to develop objective criteria for identifying and designating areas with the greatest need for Section 515 housing. We appreciate the many constructive comments that were received regarding the proposed revisions. Many of these were general comments that were helpful in developing regulations to implement the Act. We would also like to thank the RHS staff who reviewed and provided excellent comments on the draft census data and priority point scores for the revised system.

Two comments were received regarding the Agency's reserve account requirements. One commentor expressed the opinion that Agency requirements were not sufficient for the replacement of major building components and recommended increasing the annual reserve account requirement from one percent of the RHS loan amount to an amount between five and seven percent. The second commentor mentioned the need to address reserve account requirements for participation loans. As a result, we have included guidance on reserve requirements for participation loans in this rule. In addition, we have modified the instructions for the Agency's loan agreement to ensure that reserve levels are based on the total project, regardless of whether RHS is the sole lender or is participating with other funding sources. The revised instructions require that the fully funded reserve amount be based on the project's total development cost (TDC) or the appraised value, whichever is greater, rather than on the RHS loan amount.

Comments on the major proposed changes are discussed below:

1. Section 1944.211(a)(15). Eligibility requirements for applicants with noncompliance issues or fair housing violations.

Five comments were received on this section:

Two comments pertained to paragraph (i), which provides that the State Director may request a waiver from the Deputy Administrator, Multi-Family Housing, to the requirement that applicants must be in compliance with existing workout plans for a minimum of 6 months. One commentor noted that this paragraph was inconsistent with existing Agency policy, which gives the State Director the authority to grant this waiver. This was an oversight; we have changed the appropriate paragraph to be consistent with this policy. The second commentor suggested that good faith borrowers be allowed to request a waiver themselves. We believe the decision to request a waiver should be made by the Agency; good faith borrowers should work with their local RHS servicing official, who may request a waiver from the State Director when circumstances warrant.

One commentor felt the Agency included items in the list of fair housing violations that were not found in the Fair Housing Act and suggested eliminating the Fair Housing provisions. The same commentor found certain statements to be vague and asked for a definition of several phrases, including "unusual circumstances", "in compliance with requirements of existing debts", "unacceptable compliance reviews", and "acting in good faith". Two commentors submitted language they felt would accomplish the Agency's purpose and be "defensible".

The suggested language omits the 6-month compliance period for borrowers with workout plans and instead requires only that an approved workout plan be in place; it also changes the provision that borrowers with serious violations will not be considered eligible to a provision that applicants or principals who had been debarred are eligible if the debarment period has expired.

We have made several changes to this section based on the comments we received. The suggested wording regarding debarment has been included but modified to state that applicants who had been debarred but whose debarment period has expired will be considered for eligibility, subject to all eligibility requirements. We have retained our requirement for the 6-month compliance period to help ensure the applicant is complying with the terms of the workout plan and not merely signing a token plan in order to meet eligibility requirements. We have further defined "in compliance with existing debts," "unusual circumstances," and "acted in good faith." The paragraph on civil rights violations has been revised to specify that the applicant and principals must be in compliance with the Civil Rights Act of 1964, in accordance with their Assurance Agreement, Form RD 400–4.

2. Section 1944.213(f)(3). "Build and fill" policies.

Because of the loan processing changes required by the Act, the proposed language in section 1944.213(f)(3) regarding preapplications and applications was not adopted in this rule. One commentor expressed the opinion that the build and fill provisions should not apply if there was no similarity between the proposed units and existing units in type or kind, for example, family units versus elderly, 1-and 2-bedroom units versus 3-and 4-bedroom units. We considered this suggestion; however, regardless of type or size units, we believe it is necessary to assess the impact of newly developed units on the existing housing supply before authorizing additional units. For example, newly developed units may create vacancies in existing single or multi-family units that meet, or partially meet, the housing needs of the community. Therefore, no changes have been made to this policy.

3. Section 1944.215(n), establishing profit base on initial investment, has been revised to include provisions pertaining to low-income housing tax credit (LIHTC) syndication proceeds.

4. Section 1944.215(x) has been added to require the RHS servicing official to complete Form RD 2006–38, "Civil Rights Impact Analysis Certification," to ensure compliance with the civil rights policy of the Rural Development mission area.

5. Section 1944.231. Several revisions were proposed to this section but have not been adopted in this rule because of the changes in loan processing procedures required by the Act.

6. Section 1944.233. Participation with other funding sources.

Ten comments were received on this section. No commentors opposed this section but several changes were recommended:

Three commentors felt we should not require a minimum amount of RHS participation. Two of these felt the Agency should be as flexible as possible and should determine the amount of the loan on a case by case basis; one felt it was in the "best interest of the government" for RHS to provide the minimum funds necessary.

We carefully weighed the pros and cons of establishing a minimum RHS funding level for participation loans. A major consideration is whether sufficient RHS rental assistance (RA) will be available for the large number of participation loans that could be developed without a minimum RHS funding level. Nevertheless, we want to encourage and participate in as many jointly-funded proposals as possible. Therefore, each state will be responsible for determining the amount of RHS loan funds and RA that can be provided for participation loans, based on the Agency's funding priorities, the state's funding and RA levels, and the amount of assistance needed to make the participation loan feasible. If RHS RA is to be provided, RHS loan participation must equal at least ten percent of the TDC unless an exception is granted to allow a lower percentage of participation by the Administrator or Deputy Administrator for Housing in accordance with §1944.240. No preference will be given to participation loans, and all loans must be processed in accordance with Agency regulations and funding priorities.

Two commentors noted that the proposed provisions regarding RA for participation loans in this section were inconsistent with existing Agency policy, which stipulates that, where all units require RA, the RHS loan must equal at least 50 percent of TDC; where all units do not require RA, the RHS loan must equal at least 25 percent and the RA provided will be commensurate with RHS' loan participation (for example, if RHS is providing 40 percent of the funds, no more than 40 percent of the units may receive RA). RA has been distributed this FY based on existing policy; however, beginning in FY 1997, RA will be distributed in accordance with §1944.233, which provides that RHS RA can be provided on any unit where the debt service does not exceed what it would have been if RHS provided full financing, up to the RA limits established annually in RD Instruction 1940-L.

Several commentors felt that additional guidance was needed on security requirements for participation loans; one commentor offered suggestions for guidelines based on recent experience with jointly funded Community Facility projects. As a result, we have added additional guidance to this section.

We have added a paragraph designated "Design requirements," to ensure that complexes comply with the provisions of §1944.215 and §1944.222 and that any nonessential facilities permitted under this section are designed and operated with appropriate safeguards for tenant health and safety.

7. Exhibit A–7, section II.A. Addition of a requirement in Exhibit A–7 that the Market Study address need and demand for both family and elderly households and the applicant's loan proposal reflect the greater need.

Four commentors supported this requirement; three opposed it. Those who opposed this measure felt that the applicant should have a choice if there was a need for both types of housing. One commentor stated that demand will almost always be greater for families and that little, if any, elderly housing will be built if this requirement is implemented, leaving the elderly no choice but to live in family complexes although they often do not wish to do so.

After considering the arguments on both sides, we are adopting this measure with the following modifications: First, we believe the community should be aware of the results of the market analysis in all cases, including the analyst's recommendations regarding project type and size. We have revised exhibit A–7 to advise that the applicant will make available to the community the market study's conclusions regarding need and demand in the community and recommendations regarding number of units, type and number of bedrooms. This does not require the release of the market study in its entirety. Second, we have revised "greater need" to "greater proportionate need", that is, the share or percentage of the community's total rental units that are designated for the elderly will be compared to the community's share of elderly households, and the share of total rental units for families will be compared to the share of family

households in the community. Third, the applicant's proposed complex type must reflect the greater *proportionate* need of the community. (For mixed complexes, the unit mix must reflect the proportionate need of family and elderly households.) In unusual circumstances, an exception may be granted to this requirement by the State Director if at least one of the following conditions is met: the community's housing plan indicates that the community's greater immediate need is for the complex type of the smaller proportionate need and the plan includes a specific proposal to address the housing needs of the other household type; the complex has the support of a public community forum represented by diverse interests; or the units are needed because of an emergency or hardship situation, for example, a loss of housing caused by a natural disaster. The circumstances for the exception must be clearly documented in the casefile.

8. Exhibit A–7, section II.G. Use of a market survey to establish market feasibility on a case-by-case basis for proposals of 12 or fewer units.

Three commentors supported this change; three opposed it. One commentor who supported the revision recommended that this authority be limited to loan requests meeting specific conditions or from small nonprofit applicants. Those who opposed this option believe a professional market study is needed in all cases; one commented that loan quality has improved since the Agency began requiring professional market studies.

Opinions were evenly split on this issue, with good arguments for both sides. Because this change is optional for each State and requires a decision on a case-by-case basis under specific conditions, we have implemented this provision.

9. Implementation of a preliminary preapplication stage including a preliminary market analysis, or a preliminary market analysis only (with an otherwise full preapplication).

Three commentors favored implementing both a preliminary preapplication stage and market analysis; one commentor favored a preliminary market analysis only; two opposed either option; two commentors did not give an opinion (one wanted more information and felt little was saved from the existing process, the other stated that if a preliminary market analysis is implemented, a site visit should be required). The arguments for continuing to require a full preapplication and market analysis were compelling: (1) As much information, if not more, is required to reject a proposal as to authorize it; if rejected, it would be very difficult to defend the Agency's decision based on preliminary information only; (2) Since two Agency reviews would be required (preliminary and full), the processing time would not be shortened; and (3) If a full market study is requested at a later time, it implies a decision has been made and it would be more difficult than ever to reject based on market feasibility.

Because of the valid concerns of those opposing this change and because there is no appreciable time savings, we are not implementing either option at this time. In addition, with the low volume of new loan requests because of reduced funding levels and the backlog of approved proposals, implementation of a simplified application process would not result in significant savings to either the public or RHS.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rent subsidies, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.211 is amended by revising the introductory text of paragraph (a)(2) and adding paragraph (a)(15) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

* * * * *

(15) Meet the following requirements if the applicant, including the principals, has prior or existing RHS debts and is applying for a new or subsequent loan or requesting incentives to preclude prepayment. Applicants who do not meet these requirements will be rejected for failure to meet the applicable provisions of this section, as well as § 1965.213(c)(2)(i) of subpart E of part 1965 of this chapter, if applicable.

(i) The applicant, including the principals, must be in compliance with existing debts in accordance with all legal and regulatory requirements and agreements, including the Promissory Note, Loan Agreement, and mortgage, all applicable local, state, and federal laws, and must provide regular financial and other required reports within required timeframes; or, if the applicant fails to meet any of these requirements, has an approved workout plan in effect that meets the provisions of paragraph (a)(15)(ii) of this section.

(ii) An applicant or principal with an approved workout plan in effect to correct deficiencies in an existing RHS debt may be considered for eligibility if the applicant or principal has been in compliance with the provisions of the workout plan for 6 months. The State Director may waive this requirement for borrowers who have acted in good faith but are in noncompliance through circumstances beyond their control, including substantial local economic downturn, natural disaster, assuming responsibility for a troubled loan through substitution of the general partners, or assuming a loan with an existing workout plan.

(iii) Applicants and principals must be in compliance with the provisions of the Civil Rights Act of 1964 (in accordance with their Form RD 400–4, "Assurance Agreement") and all other civil rights laws. If the Agency has reasonable grounds, based on a substantiated complaint, the Agency's own investigation, or otherwise, to believe that the representations of an applicant or borrower as to civil rights compliance are in some material respect untrue or are not being honored, assistance may be deferred or denied.

(iv) Applicants or principals who have been debarred but whose debarment period has expired will be considered for eligibility subject to all requirements of this section.

(v) Applicants, including principals, who have been determined ineligible by one state may not be determined eligible by another State until the problems have been corrected or workout plans are in effect in all States in which the applicant or principal is operating.

* * * * *

§ 1944.212 [Amended]

3. Section 1944.212 is amended by adding the words "purchase and" after the word "such" in the introductory text of paragraph (b).

4. Section 1944.215 is amended by revising paragraphs (n)(1) and (n)(2) and adding paragraph (x) to read as follows:

§ 1944.215 Special conditions.

* * * * *

(n) * * *

(1) Cash contributions made by the applicant from the applicant's own resources, which, when added to the loan and grant amounts from all sources, do not exceed the security value of the project. Proceeds received by the applicant from the syndication of low-income housing tax credits (LIHTC) and contributed to the project may be considered funds from the applicant's own resources for the portion of the proceeds which exceeds:

(i) the allowable developer's fee determined by the State Agency administering the LIHTC, and

(ii) the amounts expected to be contributed to the transaction, as determined by the State Agency administering the LIHTC.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the loan and grant amounts from all sources, is not in excess of the security value of the project. An appraisal will be completed in accordance with applicable RHS regulations. Value of the applicant's contribution will be determined on an "as is" basis less liens against the property.

* * * * *

(x) *Civil Rights Impact Analysis.* It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, or marital or familial status. To ensure compliance with these objectives, the RHS approval official will complete Form RD 2006–38, "Civil Rights Impact Analysis Certification."

5. Section 1944.221 is amended by revising the introductory text of paragraph (a) to read as follows:

§1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage will be taken on the property purchased or improved with the loan, except as indicated in paragraphs (a)(1) and (a)(3) of this section and, for projects that are funded jointly by RHS and other sources, as indicated in §1944.233(f).

* * * * *

6. Section 1944.233 is added to read as follows:

§1944.233 Participation with other funding sources.

In order to develop the maximum number of affordable housing units and promote partnerships with states, local communities, and other partners with similar housing goals, RHS participation loans are encouraged.

Apartment complexes developed with participation funds may serve lower income households exclusively (RHS very-low and low income-eligible households; LIHTC income-eligible households) or may be marketed to households with mixed incomes. The following will apply:

(a) *RHS loan and rental assistance (RA) participation.*

(1) RHS may participate with loan funds only, or with both RA and loan funds, as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) If RHS RA is being provided, RHS loan participation should equal at least ten percent of the project's total development cost unless authorization for a lower percentage of participation is obtained from the National Office in accordance with §1944.240.

(3) RHS RA may be provided on any unit where the debt service does not exceed what the debt service would have been on that unit if RHS provided full financing. The number of RHS RA units available for participation loans is limited and established annually through subpart L of part 1940 of this chapter.

(b) *General conditions.*

(1) The number of units that will serve RHS income-eligible tenants must equal or exceed the number of units financed by RHS, determined by dividing the RHS loan amount by the State's average new construction cost.

(2) The total funds provided by all sources may not exceed what is necessary to make the project feasible in accordance with §1944.213(a).

(3) The total debt from all sources is limited to the State Director's loan approval authority unless written authorization is obtained from the National Office in accordance with §1944.213(b).

(4) The complex will be operated and managed in compliance with RHS requirements and regulations.

(5) If Low Income Housing Tax Credits are anticipated on a proportion of units higher than the percentage receiving RA or similar tenant subsidy, the market study must clearly reflect a need and market for units without deep subsidy. It is not the intent of RHS to provide servicing RA in the future nor can RHS provide RA on units which have a debt service higher than those if RHS had provided full financing.

(c) *Design requirements.* Complexes must comply with the provisions of §§1944.215 and 1944.222.

(1) Design features such as patios or balconies, washers and dryers, and garbage disposals may be included if they are customary for the area and needed for marketability.

(2) Mixed income complexes may include nonessential common facilities such as swimming pools provided:

(i) The facility is not financed with RHS funds,

(ii) The complex is able to support the facility's operating and maintenance costs through collection of a user fee from tenants who subscribe to the service, and

(iii) The facility is designed and operated with appropriate safeguards for tenant health and safety.

(d) *Borrower contribution and return on investment.*

(1) The minimum required borrower contribution will be based on the RHS loan amount and determined in accordance with §1944.213(b).

(2) For limited profit borrowers, additional funds exceeding the minimum required contribution that are provided from the borrower's own resources (not loans or grants from other sources) may be included in the borrower's initial investment, for purposes of determining return on investment, as provided in §1944.215(n).

(3) A loan from the borrower to the project may be considered, provided the loan proposal meets all conditions of this section and the loan to the project is from the borrower's own resources. LIHTC proceeds may be considered the borrower's own resources as provided in §1944.215(n)(1).

(e) *Reserve requirements.* RHS reserve requirements (the annual reserve requirement and the fully funded reserve amount) will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the *aggregate* fully funded reserve amount established by RHS and the other lenders equals at least 10 percent of the project's total development cost (TDC) or appraised value, whichever is greater. For example, if the other lenders do not have reserve requirements, RHS will establish its reserve requirements to meet the full aggregate amount (at least 10 percent of the TDC or appraised value of the project, whichever is greater), regardless of the RHS loan amount. On the other hand, if the other lenders have aggregate reserve requirements equal to or higher than the minimum 10 percent of TDC or appraised value required by RHS, and

the amount is sufficient to meet project needs based on its capital improvement plan, it may not be necessary for RHS to establish additional reserve requirements. Reserve requirements and procedures for reserve withdrawals should be agreed upon by all lenders and included in the intercreditor or participation agreement referenced in paragraph (g) of this section.

(f) *Security requirements.*

(1) RHS will take a first or parity lien in all instances where the Agency's participation is 50 percent or more.

(2) If RHS participation is less than 50 percent, every effort should be made to obtain a parity lien position. If a parity lien cannot be negotiated, an exception may be requested to accept a second lien position in accordance with §1944.240. The State Director will submit requests to accept a second lien position to the Deputy Administrator, Multi-Family Housing with comments and recommendations.

(3) RHS will take a first lien on project revenue from rent or occupancy payments; RHS, State, or private RA payments; and operating and reserve accounts.

(g) *Participation agreement.* RHS will enter into a participation (or intercreditor) agreement with the other lenders that clearly defines each party's relationship and responsibilities to the others.

7. Section 1944.234 is added to read as follows:

§1944.234 Actions prior to loan approval.

Prior to loan approval the application will be reviewed for continued eligibility. The applicant may be required to submit updated information at that time.

8. Exhibit A–7 of subpart E is amended in paragraph I.H. by revising the words "preapplication package" to read "loan request"; and by revising paragraph I.E. and section II; and by adding a new paragraph III.D. to read as follows:

EXHIBITS TO SUBPART E

* * * * *

Exhibit A–7—Information To Be Submitted With a Loan Request For a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

E. Evidence Concerning the Test for Other Credit—Applicants must be unable to obtain other credit at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. Based upon a review of the applicant's financial condition, the servicing official may require the applicant to provide documentation regarding the availability of other credit.

* * * * *

II. *Need and demand.*

A. Economic justification, the number of units, and the type of facility (family, elderly, congregate, mixed, group home, or cooperative) will be based on the housing need and demand of eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) may not be included in determining need and project size. Similarly, homeowners may not be included in determining need and project size. The market study must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market. The market study must assess need and demand for both family and elderly renter households. The conclusions of the market study must be provided to the community by the applicant, through direct contact with community officials whenever possible. The type of complex (family, elderly, etc.) that is proposed by the applicant must reflect the greater proportionate need and demand of the community, that is, the share or percentage of the community's total rental units that are designated for the elderly will be compared to the community's share of elderly households, and the share of total rental units for families will be compared to the share of family households in the community. (For mixed complexes, the unit mix must reflect the proportionate need of each household type.) In unusual circumstances, where there is a compelling need for a complex type that does not represent the greater proportionate need (i.e., family vs. elderly need), the State Director may consider granting an exception to this requirement. At least one of the following conditions must be met in order to consider an exception: the community's or State's housing plan indicates that the greater immediate need is for the complex type of the smaller proportionate need and the plan includes a specific proposal to address the housing needs of the other household type; the complex has the support of a public community forum represented by diverse interests; or the units are needed due to an emergency or hardship situation, for example, a loss of housing caused by a natural disaster. The circumstances for the exception must be documented in the casefile. The bedroom mix of the proposed units must reflect the need in the market area based on renter household size and the bedroom mix of existing units. Market feasibility for the proposed units will be determined by RHS based on the market information provided by the applicant (requirements are described in section II.E. of this exhibit), RHS' knowledge of the market area and judgment concerning the need for new units, RHS' experience with the housing market in the State and local area, and the U.S. Department of Housing and Urban Development's (HUD's) or similar lender's analysis of market feasibility for the proposed units.

B. The applicant must provide a schedule of the proposed rental or occupancy rates and, for congregate housing proposals, a separate schedule listing the proposed cost of any nonshelter service to be provided.

C. For proposals where the applicant is requesting Low-Income Housing Tax Credits (LIHTC), the applicant must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

D. For Rural Cooperative Housing (RCH) proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. Exhibit A–4 of this subpart contains a Cooperative Housing Survey form which may be used for this purpose.

E. For Rural Rental Housing (RRH) proposals, except as permitted by section II. G. of this exhibit, a professional market study is required. The qualifications of the person preparing the market study should include some housing or demographic experience. The following requirements apply:

(1) A table of contents, the analyst's statement of qualifications, and a certification of the accuracy of the study must be included.

(2) Market analysts must affirm that they will receive no fees which are contingent upon approval of the project by RHS, before or after the fact, and that they will have no interest in the housing project. An analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

(3) The analyst must personally visit the market area and project site and must certify to same in the market study. Failure to do so may result in the denial of further participation by the analyst in the Section 515 program.

(4) A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, and other sources of local economic and housing information such as newspapers, realtors, apartment owners and managers, community groups, and chambers of commerce is required. Exhibit A–8 of this subpart details the specific information which professional market studies are required to provide. The study must be presented in clear, understandable language. Negative as well as positive market trends

must be disclosed and discussed. Statistical data must be accompanied by analytical text which explains the data and its significance to the proposed housing. Mathematical calculations must be expressed in actual numbers and may be accompanied by percentages. Each table or section must identify the source of the data. A brief statement of the methodology used in the study should be included in the foreword and in other sections where necessary for clarity. RHS personnel will utilize the market study checklist found at exhibit A–12 of this subpart (available in any Rural Development office) as a means of measuring market study credibility.

(5) The market study will include:

a. A complete description of the proposed site and its location with respect to city boundary lines, residential developments, employment centers, and transportation; the location and description of available services and facilities and their distances from the site; a discussion of the site's desirability and marketability based on its location in the community, adjacent land uses, traffic conditions, air or noise pollution, and the location of competitive housing units; and a description of the site in terms of its size, accessibility, and terrain.

b. Pertinent employment data, including the name and location of each major employer within the community and market area, its product or service, number of employees and salary range, commute times and distances, and the year the employer was established at the location. If income data cannot be obtained from individual employers, salary information for the community can be obtained from the state employment commission.

c. Population data required by exhibit A–8 of this subpart, including population figures by year, number and percentage of increase or decrease, and population characteristics by age.

d. Household data required by exhibit A–8 of this subpart, including number of households by year, tenure (owner or renter), age, income groups, and number of persons per household.

e. Building permits issued and demolitions by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may be substituted with the number of requests for electric service connections, number of water or sewer hookups, etc., obtained from local suppliers.

f. Housing stock by tenure and vacancy rates for total number of units, one-unit buildings, two- or more-unit buildings, mobile homes, and number lacking some or all plumbing facilities.

g. A survey of existing rental housing by name, location, year built, number of units, amenities, bedroom mix, type (family, elderly, etc.), rental rates, and rental subsidies if any.

h. A projection of housing need and demand and the analyst's recommendation for the number, type, and size of units, based on the number of RHS and LIHTC income-eligible renter households, the existing comparable housing supply and vacancy rates, the absorption rate of recently completed units, the number of comparable units currently proposed or under construction, and current and projected economic conditions.

F. For congregate housing proposals with central dining area or housing involving a group living arrangement, a narrative statement from local, state, or federal government agencies supporting the current and long-range need for the facilities in the community and its trade area is required.

G. For RRH proposals of 12 or fewer units, the State Director may authorize the use of a market survey to establish market feasibility on a case-by-case basis. This authority may be used when there is evidence of strong market demand, for example, very low vacancy rates and long waiting lists in existing assisted or comparable rental units. The casefile must be documented accordingly. Exhibits A–2, A–3, and A–5 of this subpart may be used for the market survey.

III. * * *

D. Appropriate zoning or evidence of capability to be appropriately zoned.

* * * * *

Dated: May 1, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–11818 Filed 5–6–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing new construction loan funds and Section 521 Rental Assistance (RA). This document describes the following: the authority and allocation of loan funds and new construction rental assistance (RA); the application process; submission requirements; and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State Office on June 16, 997. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. In particular, applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance should contact the Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Rural Development State Offices

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Sterling Center Office Building, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3455, Jim Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, Steve Langstaff

Arkansas State Office, 700 W. Capitol Ave., Rm. 5411, Little Rock, AR 72201–3225, (501) 324–6701, Cathy Jones

California State Office, 194 West Main Street, Suite F, Woodland, CA 95695–2915, (916) 668–2090, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122) , "Sam" Mitchell

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, W. Arthur Greenwood

Florida State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3005, Abraham Kubo

Idaho State Office, 3232 Elder Street, Boise, ID 83705, (208) 378–5627, Beverly J. Aslett

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3115, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (913) 271–2720, Gary Shumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7950, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, Beverly A. Stone

Maryland—Served by Delaware State Office,

Massachusetts State Office, 451 West Street, Amherst, MA 01002, (413) 253–4327, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (515) 337–6635 (ext. 1608), Larry Hammond

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (612) 290–3912, Randall Hemmerlain

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, Mike Ladner

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, Marylou Falconer

Nebraska State Office, Federal Building, room 308, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5557, Byron Fischer

Nevada State Office, 390 South Curry Street, Carson City, NV 89703–5405, (702) 887–1222, Jackie J. Goodnough

New Hampshire—Served by Vermont State Office,

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, Carmen N. Lopez

New York State Office, The Galleries of Syracuse 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, Kathy David

Ohio State Office, Federal Building, Room 507, 5200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, Patsy Graumann

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 9724–2333, (503) 414–3350, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 782–4574, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (809) 766–5095 Ext. 256, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835

Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, Frances S. Kelley

South Dakota State Office, Federal Building, Room 308, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1071, (615) 783–1375, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (817) 774–1305, Eugene G. Pavlat

Utah State Office Wallace F. Bennett Federal Building, 125 S. State Street, Room 5438, Salt Lake City, UT 84138, (801) 524–3242, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor 89 Main Street, Montpelier, VT 05602, (802) 828–6020, Russell Higgins

Virgin Islands—Served by Vermont State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582. Gayle Friedhoff

Washington State Office, 1835 Black Lake Blvd. SW., Suite D, Olympia, WA 98512–5717, (360) 704–7707, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, Charles E. Huff

FOR FURTHER INFORMATION CONTACT: Applicants should contact the appropriate Rural Development State Office listed above for funding availability and limitations. For general information, applicants may contact Linda Armour, Cynthia L. Reese-Foxworth, or Carl Wagner, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, Washington, DC, 20250, telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Allocation

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485). The Agency is authorized to make loans to any individual, corporation, association, trust, Indian tribe, private nonprofit corporation, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income as well as other persons and families of low income in rural areas. Rental assistance is a tenant subsidy available to very-low and low-income families residing in rural rental housing facilities with RHS financing, and is requested with application for such facilities.

B. Allocation Amounts

Based on the allocation formula contained in 7 CFR part 1940, subpart L "Methodology and Formulas for Allocation of Loan and Grant Program Funds," RHS has allocated available funds directly to each Rural Development State Office. The Agency also has $6.9 million available nationwide in a set-aside for eligible nonprofit organizations and $4.8 million available in the Rural Housing Targeted Set-aside for certain underserved areas.

The Rural Housing Service has revised its application and review process for Section 515 Rural Rental Housing new construction program. Regulations are published elsewhere in this **Federal Register** as noted below. Those regulations provide that some prior year applicants may proceed with their applications as long as it complies with these new regulations. Therefore, the following States have applications on hand from prior years in designated places that will use all of its direct allocation:

Alaska,
Illinois,
Kansas,
Louisiana,
Maine,
Nevada,
Ohio,
Oregon,
South Dakota,
Tennessee,
Texas, and Wisconsin.

Other States also have applications on hand that will use only part of their allocation. In addition, as noted above, limited funds are available to all States for eligible nonprofit organizations and to some States for the Rural Housing Targeted Set-aside. Accordingly, all potential applicants and interested parties must contact the appropriate Rural Development State Office to ascertain funding availability from the State's allocation and potential availability of funds from the set-asides for nonprofit organizations and underserved areas.

II. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed. No application will be accepted after June 16, 1997, 5:00 p.m., local time, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

III. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Application information;
2. Any restrictions on funding availability (applications that do not conform to or exceed the State's limit on size of project and dollar amount will be returned to the applicant); and
3. List of designated places for funding new section 515 facilities.

IV. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National Office and one by the State Office, to support special initiatives at the National and State Office level. Since this selection criteria was published as

part of an interim final rule, without full public comment, these optional criteria will not apply this fiscal year.

B. Loan requests filed in response to this NOFA are subject to the regulatory provisions with respect to the Interim Final Rules entitled "Processing Requests for Section 515 Rural Rental Housing (RRH) Loans", and "Rural Rental Housing (RRH) Assistance," which are published in this **Federal Register**.

Dated: May 1, 1997.

Ronnie O. Tharrington,

Acting Administrator, Rural Housing Service.

[FR Doc. 97–11816 Filed 5–6–97; 8:45 am]

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federal register

Wednesday
May 7, 1997

Part IV

Department of Housing and Urban Development

Funding Availability for Housing Opportunities for Persons With AIDS; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4210–N–01]

Notice of Funding Availability for Housing Opportunities for Persons With AIDS

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

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This Notice announces the availability of $19,600,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons With AIDS (HOPWA) program. This NOFA contains information concerning eligible applicants, the funding available, the categories of assistance, including Special Projects of National Significance, projects under the HIV Multiple-Diagnoses Initiative (MDI) and projects in areas that do not receive HOPWA formula allocations, the availability of funds for national HOPWA technical assistance, the availability of additional funds for current MDI grantees for additional evaluation activities, the use of performance measures, the rating criteria, the application package, its processing, and the selection of applications.

DEADLINE DATE: Applications for HOPWA assistance are due in HUD Headquarters by midnight Eastern Time on *July 15, 1997.*

Before and on the deadline date, and during normal business hours (up to 6:00 pm) completed applications will be accepted at the Processing and Control Branch, Room 7251, Office of Community Planning and Development (CPD) in Washington at the address below.

On the deadline date and after normal business hours (after 6:00 pm), hand-carried applications will be received at the South Lobby of the Department of Housing and Urban Development at the address below. HUD will treat as ineligible for consideration delivered applications that are received after that deadline.

Applications Mailed. Applications will be considered timely filed if postmarked before midnight on *July 15, 1997,* and received by HUD Headquarters within ten (10) days after that date.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered timely filed if received before or on *July 15, 1997,* or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than *July 15, 1997,* and received by HUD Headquarters within ten (10) days after that date.

No facsimile (FAX). Applications may not be sent by FAX.

Copies of Applications to Field Offices. Two copies of the application must also be sent to the HUD Field Office serving the area in which the applicant's projects are located or, in the case of a project that proposes to undertake activities on a national basis, the area in which the applicant's administering office is located. Field office copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at HUD Headquarters in Washington. All three copies may be used in reviewing the application.

ADDRESSES: For a copy of the application package and supplemental information please call the Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TTY), or by internet at *www.hud.gov/fundopp.html.*

The address of the HUD Headquarters is: Processing and Control Branch, Room 7251, Office of Community Planning and Development (CPD), Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, Attention: HOPWA Funding. A list of the CPD Directors in the area CPD offices appears at the end of this NOFA.

ELECTRONIC COPY: You may obtain an electronic copy of the HOPWA application form that may be used in applying under this notice as well as a copy of this NOFA with attached Frequently Asked Questions (FAQ) and other information, via HUD's World Wide Web home page at *www.hud.gov/fundopp.html.* The electronic copy of the application is available on HUD's home page in a Portable Document Format (pdf) that can be used in preparing the standard forms, narrative exhibits and the budget exhibit for your application. Material from this electronic version can be used interchangeably with the printed application. The additional general information on the HUD Home Page provides descriptions of grants selected in prior HOPWA competitions and summaries of area consolidated plans, as well as information on other HUD programs. Instructions on how to access the application and the files are available at those sites.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

The list of related NOFAs the Department has published in the **Federal Register** in the last few weeks includes:

The Continuum of Care Homeless Assistance NOFA (including the Supportive Housing Program, the Shelter Plus Care program, and the Sec. 8 Moderate Rehabilitation Single Room Occupancy Programs for Homeless Individuals), published on April 8, 1997 (62 FR 17024); *The Family Unification NOFA,* published on April 18, 1997 (62 FR 19208); *The Designated Housing NOFA,* published on April 10, 1997 (62 FR 17672); and *The NOFA for Mainstream Housing Opportunities,* published on April 10, 1997 (62 FR 17666).

The related NOFAs that the Department expects to publish in the next few weeks include the following: *The Supportive Housing for the Elderly NOFA; The Housing for Persons With Disabilities NOFA;* and *The Service Coordinator Funds NOFA.*

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at *http://*

www.hud.gov/fundopp.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal or State government.

FOR FURTHER INFORMATION AND TECHNICAL ASSISTANCE CONTACT: A video presentation providing general background that can be useful in preparing your application can be obtained for a nominal fee from the Community Connections information center. The fee may be waived in the event of financial hardship.

For answers to your questions, you have several options: you may contact the HUD CPD office that serves your area, at the phone and address shown in the appendix; you may contact the Community Connections information center at 1–800–998–9999 (voice); 1–800–483–2209 (TTY) or by email at *comcon@aspensys.com;* or you may contact the Office of HIV/AIDS Housing at 1–202–708–1934 (voice) or by 1–800–877–8339 (TTY) at HUD Headquarters.

An appendix also provides frequently asked questions and answers on the HOPWA competition. Information is also available on the HOPWA program, including descriptions of the 1996 competitive grants, area consolidated plans and other related topics on the HUD HOME Page on the World Wide Web at *http://www.hud.gov.*

Prior to the application deadline, staff will be available to provide general guidance, but not guidance in actually preparing the application. Staff in the HUD CPD office that serves your area also will be available to help identify organizations in your community that are involved in developing the area's Consolidated Plan and Continuum of Care system. Following conditional selection, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0133 (exp. 5/31/97). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(a) Purpose and General Statement

Under selection procedures established in Section II, the funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under three categories of assistance:

(1) Grants for Special Projects of National Significance (SPNS) which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons;

(2) Grants for projects under the HIV Multiple-Diagnoses Initiative (MDI) which establish model and innovative projects that address the needs of eligible persons who are also homeless and have chronic alcohol and/or other drug abuse issues and/or serious mental illness; and

(3) Grants for projects which are part of Long-term Comprehensive Strategies (Long-term) for providing housing and related services for eligible persons in areas that are not eligible for HOPWA formula allocations.

In addition, the Department proposes to select at least one Special Project of National Significance award to operate a national HOPWA technical assistance program over three years, as described in paragraph (g). This notice also provides for a separate selection process for applications that request additional funds to complete, modify and/or expand the evaluation of MDI projects that were selected in the 1996 HOPWA competition. The program requirements for this separate selection process for current MDI grants are described in Section I(f)(4) and are provided in Section III, below.

The Department recommends that applicants for HOPWA assistance under this NOFA emphasize client access to housing and to appropriate supportive services in designing their programs. In establishing goals to end the epidemic of HIV and AIDS, President Clinton identified, in *The National AIDS Strategy* (issued in December 1996), the national goal of ensuring that all people living with HIV have access to services, from health care to housing and supportive services, that are affordable, of high quality, and responsive to their needs. The Strategy further recognized that "without stable housing a person living with HIV has diminished access to care and services and a diminished opportunity to live a productive life." In addition, the Department recommends that proposals also emphasize how they will meet requirements for the accessibility of the housing to be provided to eligible persons, and applicants may also address the visitability of units and structures, including integrating universal design features that provide basic accessibility in entry and mobility throughout structures and other modifications that respond to the needs of clients with disabilities.

The Department anticipates selecting projects under each of the three categories of assistance that will serve as model components of the community's larger effort to use Federal and other resources to meet area needs, including the development of a consolidated plan for these resources and the creation of a continuum of care system to assist homeless persons. For a community to successfully address its often complex and interrelated problems, including homelessness and the risk of homelessness among persons living with HIV/AIDS and their families, the community must marshal its varied community and economic development resources, and use them in a coordinated and effective manner.

The Consolidated Plan serves as the vehicle for a community to comprehensively identify each of its needs and to coordinate a plan of action for addressing them. Within the context of the consolidated plan, communities are also asked to address the needs of persons who are homeless by creating, improving and/or maintaining the area's Continuum of Care system.

The Continuum of Care system seeks to achieve two goals: (1) maximum participation by non-profit providers of housing and services; homeless and formerly homeless persons; State and local governments and agencies; veteran service organizations; the private sector; housing developers; homeless persons with disabilities; foundations and other community organizations; and (2) creation, maintenance and building upon the community-wide inventory of housing and services for homeless families and individuals; identification of the full spectrum of needs of homeless families and individuals; and coordination of efforts to obtain resources, particularly resources sought through the Department's Continuum of Care NOFA to fill gaps between the current inventory and existing needs.

Under the MDI category, this notice continues for a second year a HUD initiative to assist homeless persons who are living with HIV/AIDS who have

chronic alcohol and/or other drug abuse issues and/or serious mental illness. The 1996 notice was published on February 28, 1996, at 61 FR 7664. The 1996 initiative responded to recommendations expressed during the 1995 White House Conference on HIV and AIDS, as well as to recommendations to HUD by residents and providers of HIV/AIDS housing. *The National AIDS Strategy* noted the importance of this 1996 initiative by HUD and the Department of Health and Human Services (HHS) and stated that efforts "to improve integration will be continued and expanded, with special attention to linking HIV and substance abuse prevention and services." The HIV Multiple-Diagnoses Initiative continues to be a collaborative effort to establish, evaluate and disseminate information on model programs to provide the integration of health care and other supportive services with housing assistance for eligible persons. The initiative targets assistance to homeless persons who often have complex needs and for whom service systems are often least developed.

(b) Authority

The assistance which may be made available under this NOFA is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901) and from the Department's fiscal year 1997 appropriation, the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997," Pub. L. 104–204, approved September 26, 1996.

The regulations for HOPWA are found at 24 CFR part 574. The Fiscal Year 1997 program is governed by the HOPWA Final Rule, published in the **Federal Register** on April 11, 1994 (59 FR 17194), 24 CFR Part 574. The rule was amended by the Consolidated Submissions for Community Planning and Development Programs, Final Rule, 24 CFR Part 91, published on January 5, 1995 (60 FR 1878), amended by a Final Rule, General HUD Program Requirements: Cross-Cutting Requirements, published on February 9, 1996 (61 FR 5198), and further amended by a Final Rule, Regulatory Reinvention: Streamlining the Housing Opportunities for Persons with AIDS Program, published on February 29, 1996 (61 FR 7962).

(c) Categories of Assistance

This notice will provide funds under three categories of assistance for new grants that will be selected under section II:

(1) Grants for Special Projects of National Significance (SPNS) which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons, including at least one grant for national HOPWA technical assistance;

(2) Grants for projects under the HIV Multiple-Diagnoses Initiative (MDI) which establish model and innovative projects that address the needs of eligible persons who are also homeless and have chronic alcohol and/or other drug abuse issues and/or serious mental illness; and

(3) Grants for projects which are part of Long-term Comprehensive Strategies (Long-term) for providing housing and related services for eligible persons in areas that are not eligible for HOPWA formula allocations in fiscal year 1997.

This notice will also provide funds for current MDI grantees under section III.

(d) Eligibility

For new grants that will be selected under section II:

(1) States, units of general local government, and nonprofit organizations may apply for grants for Special Projects of National Significance and grants under the HIV Multiple-Diagnoses Initiative.

(2) Certain states and units of general local government may apply for grants for projects under the Long-term category of grants, if the proposed activities will serve areas that were not eligible to receive HOPWA formula allocations in fiscal year 1997; an appendix describes these areas. Nonprofit organizations are not eligible to apply directly for the Long-term category of grants but may serve as a project sponsor for an eligible state or local government grantee.

(e) Award Amounts and Performance Benchmarks

(1) Amount of Available Funds

A total of $19,600,000 is being made available by this NOFA. The Department expects that approximately $9 million will be used under an initiative to address the needs of multiply-diagnosed homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse issues and/or serious mental illness. Subject to the reprogramming procedures required by the 1997 VA–HUD-Independent Agencies Appropriations Act, P.L. 104–204, section 218, additional funds may be awarded if funds are recaptured, deobligated, appropriated or otherwise made available during the fiscal year.

(2) Maximum Grant Amounts

The maximum amount that an applicant may receive is $1,000,000 for program activities. An applicant may receive up to 3 percent of the amount that is awarded for program activities for grantee administrative costs and, if the application involves project sponsors, up to 7 percent of the amount that is provided to project sponsors for program activities for the project sponsors' administrative costs. For example, an applicant might receive up to an additional $100,000 for administrative costs (potentially up to $30,000 for grantee administrative costs and up to $70,000 for project sponsors' administrative costs). Due to statutory limits on administrative costs, no project sponsor administrative costs are available in cases where the grantee directly carries out the program activities and that grantee is limited to using up to 3 percent of the grant amount for administering the grant. An applicant should note that the costs of staff that are carrying out the program activities may be included in those program activity costs and that costs may be prorated between categories as may be appropriate. A sponsor is only eligible to use up to 7 percent of the amount that they receive for the sponsor's administrative costs.

For a MDI applicant only, this notice also makes available up to $170,000 for program development support to undertake the MDI evaluation and dissemination component described below in paragraph (f)(3).

(3) Award Modifications

HUD reserves the right to fund less than the full amount requested in any application, to make mathematical corrections, to remove funds designated for an ineligible activity and to modify requests accordingly. If a request is modified by HUD, the conditionally selected applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement. HUD also reserves the right to ensure that a project that is applying for and eligible for selection under this and other competitions, including the 1997 Continuum of Care Homeless Assistance NOFA, is not awarded funds that duplicate activities.

(4) Performance Benchmarks

Funds received under this competition are expected to be expended within three years following the date of the signing of a grant agreement. As a condition of the grant, selected projects are expected to

undertake activities based on the following performance benchmarks: (a) a project that involves the acquisition or leasing of a site is required to gain site control within one year of their selection, i.e, one year from the date of the signing of their selection letter by HUD; (b) if the project is proposing to use HOPWA funds to undertake rehabilitation or new construction activities, the project is required to begin the rehabilitation or construction within eighteen months of their selection and to complete the activity within three years of that date; and (c) except for a project that involves HOPWA-funded rehabilitation or construction activities, the project is required to begin program operations within one year of their selection. If a selected project does not meet the appropriate performance benchmark, the Department reserves the right to cancel or withdraw the grant selection or otherwise deobligate awarded funds. In exercising this right, the Secretary may waive a termination action in cases that HUD determines evidence that the delay and failure to meet the performance benchmark are due to factors that were beyond the control of the grantee.

(f) HIV Multiple-Diagnoses Initiative

(1) Overview of MDI

This notice implements, for a second year, an initiative to address the needs of multiply-diagnosed homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse issues and/or serious mental illness. In 1996, this HUD–HHS initiative began to address these needs by funding projects for model programs for multiply-diagnosed clients under the Special Projects of National Significance components of the HOPWA program administered by HUD and the Ryan White CARE Act programs administered by HHS. During the 1996 competition, HUD received 78 approvable MDI applications which requested over $79 million in HOPWA program funds. Based on their responsiveness to the rating criteria, eight of these applications were selected by the Department and awarded a total of $8,171,233 under the MDI category of assistance. Applications that were not selected in 1996, as a result of available funds, constitute an example of the unmet need in communities throughout the nation in assisting persons who are homeless and are living with HIV/AIDS who also have chronic alcohol and/or other drug abuse issues and/or serious mental illness.

The HOPWA assistance announced in this notice may be undertaken in conjunction with related assistance available under the Ryan White CARE Act as administered by the Department of Health and Human Services, programs under the Department of Veterans Affairs, and other Federal, state and local programs. Projects to be selected under the fiscal year 1997 HOPWA funding will also benefit from guidance or experience on project successes and lessons learned as well as other information that will be developed on the fiscal year 1996 MDI grantees through the efforts of the HHS-funded Evaluation Technical Assistance Center. The Center is undertaking national and multi-site evaluations and providing support for project assessment for the MDI projects selected by HUD and by HHS in 1996.

The Department estimates that approximately $9 million will be used to address the needs of MDI clients. This expected amount will help ensure that a sufficient number of applications, estimated to be six to nine projects, are selected under the initiative in 1997 in order to provide for the operation and evaluation of a variety of model programs as well as provide additional resources to the targeted underserved population. HUD reserves the right to reduce this estimate for the HIV Multiple-Diagnoses Initiative and reallocate funds to the other categories of assistance if an insufficient number of approvable applications are received for this initiative.

(2) Standard MDI Elements

The Department advises applicants that, in proposing activities to be funded under HOPWA and other sources, the following standard program elements should be addressed in providing assistance to multiply-diagnosed homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse issues and/or serious mental illness. Among those elements are:

- Outreach to homeless persons who are living with HIV/AIDS and have chronic alcohol and/or other drug abuse issues and/or serious mental illness;
- Client needs assessment and monitoring;
- Short-term or transitional supportive housing;
- Permanent supportive housing;
- Health care and other supportive services that address the needs of eligible homeless persons with chronic alcohol and/or other drug abuse issues and/or serious mental illness;
- Safe haven residences or other housing assistance for homeless persons with serious mental illness that have minimal initial demands on residents and do not require participation in services. It is hoped and anticipated that, in time, safe haven clients will participate in mental health programs and/or substance abuse programs and move to or accept short-term, transitional or other supportive housing;
- Participant involvement in decision-making and project operations;
- Participant safety, how activities address required accessibility to housing units and other structures, transportation needs and access to community amenities are addressed;
- Program evaluation in coordination with a nation-wide multi-site evaluation; and
- Optionally, other innovative features of the project.

The elements may be funded under this initiative or funded in part under this initiative in connection with efforts supported from other federal, state, local or private sources, including health-care and other supportive services funded under the Ryan White CARE Act and services for veterans under the Department of Veterans Affairs. Given the limited amount of housing assistance funds available under this program, HUD encourages applicants to fund supportive services activities from non-HOPWA sources.

Under this initiative, the targeting of assistance to homeless persons means that assistance is provided to persons who are sleeping in emergency shelters (including hotels or motels used as shelter for homeless families), other facilities for homeless persons, or places not meant for human habitation, such as cars, parks, sidewalks, or abandoned buildings. This includes persons who ordinarily live in such places but are in a hospital or other institution on a short-term basis (short-term is considered to be 30 consecutive days or less). In targeting assistance, HUD expects that only an incidental percentage of clients who are not homeless, as described above, but are at risk of homelessness will be assisted under this initiative.

An applicant may propose to assist eligible persons in a Safe Haven, which is a form of assistance designed to provide persons with serious mental illness who have been living on the streets with a secure, non-threatening, non-institutional, supportive environment. A safe haven proposal should: (1) propose to serve hard-to-serve homeless persons; (2) provide 24 hour residence; (3) provide private or semi-private accommodations; (4) provide for accessibility, including, optionally, for the common use of accessible kitchen facilities, dining

rooms, and bathrooms; and (5) limit overnight occupancy to no more than 25 persons in any one structure. The rating criteria have been modified for safe haven proposals to ensure that the special characteristics of safe havens are not considered less competitive than alternative supportive housing proposals.

(3) MDI Evaluations

A prime feature of any model project that will be selected under the HIV Multiple-Diagnoses Initiative is the project's active participation in the national evaluation of project activities and the dissemination of information to other organizations in order to help improve the systems of care and continuum-of-care initiatives for the targeted population in other localities and nationally. The MDI applicant must establish measurable objectives for their project in their application and must agree to participate in the process and outcome evaluation and dissemination component. This notice provides up to $170,000 in additional funds to MDI applicants that sign the agreement that is provided in the 1997 application package.

To ensure the highest degree of coordination in a nation-wide multi-site evaluation of MDI projects that were selected in 1996 by HUD and by HHS, this notice requires applicants for MDI grants to acquire the services of the Evaluation Technical Assistance Center (ETAC). This center was established by HHS in 1996 in collaboration with HUD to advance knowledge and skills in HIV services delivery to stimulate the design of innovative models of care by providing technical support and evaluation of MDI projects selected under the related HUD and HHS notices. In continuing MDI under this notice, HUD also recognizes the continued national significance of creating effective evaluation tools and disseminating information on a national basis on the success or lessons learned from MDI projects.

As a condition of the MDI grant award, the grantee will use up to $170,000 in additional program development and evaluation funds to conduct their local evaluation activities as well as participate in national evaluation meetings (for up to $90,000 of these funds) and to acquire ETAC services to evaluate project performance and disseminate information on project outcomes (for up to $80,000 of these funds). The Department expects that six semiannual evaluation meetings will be held with MDI participants over the three year operating period for these grants.

Although successful MDI applicants will be assigned an ETAC evaluator after selection, the applicant should consider designing and proposing activities in their application that anticipate the planned role of this evaluator. In assisting MDI grantees, the ETAC evaluator will help: (1) Define research questions that will be addressed and examined during the project period; (2) Design the full local evaluation in consultation with the project director and staff; (3) Develop instruments to assess qualitative and quantitative variables; (4) Train project staff in the collection of data or collect the data; (5) Monitor data collection activities to assure that submissions are complete and accurate, including data coding and entry; (6) Analyze the data collected; (7) Prepare reports summarizing findings; (8) Maintain communications with the project director and staff in furtherance of evaluation activities; (9) Assist in the ETAC 1997 national multi-site data evaluation effort; and (10) Serve as a liaison to the national multi-site data evaluation effort underway for MDI grantees that were selected in 1996.

The program development support and evaluation activities are eligible HOPWA activities under 24 CFR 574.300(b) (2) and (11) as: "Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives"; and "For competitive grants only, any other activity proposed by the applicant and approved by HUD." The later paragraph is based on section 855 of the AIDS Housing Opportunity Act (AHOA) that authorizes grantees selected by HOPWA competitive funds to carry out other activities that the Secretary develops in cooperation with eligible States and localities. The Department has received recommendations that the program place additional emphasis on technical assistance in the planning, development and operation of projects as well as greater use of information obtained through the evaluation of programs. In addition, as noted by HUD in 1996 in establishing MDI, communities have requested that additional efforts be made to address the needs of the MDI target population, multiply-diagnosed homeless persons who are living with HIV/AIDS who have chronic alcohol and/or other drug abuse issues and/or serious mental illness. The use of funds for program evaluation and dissemination of information responds to these recommendations.

(4) Additional Evaluation Funds for Current MDI Grantees

The Department has decided to set aside part of the amounts available under this NOFA to promote the evaluation and dissemination of information among current MDI grantees. Therefore, as provided in section III, a separate competition within this year's funding will be undertaken to select applications from current MDI grantees that propose responsive evaluation and dissemination activities. Under the funds available in this NOFA, up to $400,000 will be set aside for a competition among the grantees awarded MDI grants in fiscal year 1996. It is estimated that the eight grantees that were selected under the Department's 1996 HIV Multiple-Diagnoses Initiative will apply for and be selected for up to $50,000 each under this selection to be used in completing, modifying and/or expanding the planned evaluation of project performance and dissemination of information on project outcomes and in acquiring the services of the Evaluation Technical Assistance Center, as described in paragraph 3. If any funds set aside for current MDI grantees are not awarded at the time of selection, the funds will be awarded under Part II for new grants.

The Department recognizes that the eligible applicants under this paragraph were selected in the first national competition under MDI and that, except for activities that would be completed, modified and/or expanded for project evaluation with these 1997 funds, the grantees will be carrying out activities that were already determined on a competitive basis to be exemplary and/or innovative in responding to the needs of the target population. The Department is therefore not requiring that these potential applicants for 1997 funds resubmit their 1996 application that the Department has already reviewed and selected for grant award in that prior competition. However, the Department will require this group of applicants to submit a SF–424, Applicant certifications, and a letter or other written documentation which provides a justification based on need for and their plan to use funds for evaluation activities. As provided in Section III, the Department will review these 1997 applications based on rating criteria that have been modified.

(g) National HOPWA Technical Assistance

The Department proposes to select at least one Special Project of National

Significance award to operate a national HOPWA technical assistance program over three years. From the funds to be made available under this category, HUD reserves up to $1 million to be awarded to the highest rated application (or applications) that proposes national HOPWA technical assistance activities.

The Department anticipates that the selected national HOPWA technical assistance proposal would provide technical assistance and consultations to improve community-based needs assessments, multiple-year HIV/AIDS housing planning, facility operations and other management practices of organizations which provide or plan to provide housing assistance and/or related supportive services for persons living with HIV/AIDS and their families. The assistance would also provide support for HOPWA grantees and project sponsors, including recipients of HOPWA formula allocations and competitive awards and designated first-time recipients of formula allocations. The organizations would receive advice and training on capacity-building and housing development and operation and the use of the Department's Consolidated Planning Process, Integrated Disbursement and Information System, and Grants Management System. The program may also provide assistance in developing community-based needs assessments and assistance for State-wide, metropolitan, non-metropolitan and/or rural areas in development of area multi-year HIV and AIDS housing plans. A research and information services component of this effort may include the development of information on HIV/AIDS housing and the performance of HOPWA grants which will be published for national distribution. This component should emphasize the collection and dissemination of information on the "best practices" of HUD grantees that should serve as a basis for peer support, technical assistance, and program improvement. As part of this technical assistance grant, the grantee should plan for conducting grantee and sponsor workshops, developing training materials and sponsoring conferences. HUD employees involved in the management of the consolidated planning process and development of Continuum of Care systems may also use materials developed under this grant.

In proposing to select this award, the Department advises that other proposals may also propose and be selected to use HOPWA funds for program development and evaluation activities. HOPWA funds may be used for these activities at 24 CFR 574.300(b) under these related categories: technical assistance in establishing and operating a community residence; resource identification to establish, coordinate and develop housing assistance resources; housing information services; and other proposed activities that are accepted by HUD. Applications that propose these activities will be considered under the appropriate category of assistance.

In addition, the full scope of technical assistance activities that may be undertaken are eligible HOPWA activities under section 855 of AHOA that authorizes grantees selected by HOPWA competitive funds to carry out other activities that the Secretary develops in cooperation with eligible States and localities. The Department has received community recommendations that the program place additional emphasis on technical assistance in the planning, development and operation of projects as well as in undertaking the evaluation of performance from grantees and project sponsors which have been administering HOPWA formula allocations and/or competitive grants. The use of funds for national technical assistance responds to these recommendations.

(h) Performance Measures and Measurable Objectives

(1) General Measures

Applicants under all three categories of assistance should establish general HOPWA-related performance measures in connection with more specific goals and objectives of their proposed activities. The measures should reflect area needs assessments, priorities and other elements of the strategic plan and one-year action plans under the area's consolidated planning process and area Continuum of Care systems. In soliciting proposed performance measures, the Department anticipates that applications to be selected under this competition will provide examples of best practices in developing and documenting performance standards and outcomes in programs that assist HOPWA eligible beneficiaries. The Department also anticipates that information on these examples will be shared with other entities to further promote the use of performance standards and program outcome measures under the HOPWA program.

As general guidance, the applicant's objectives should relate to two overall goals of the HOPWA program. These general goals are: maximizing independent living; and maximizing self-determination. In developing more standard, program-wide performance measures, this notice recommends that applicants may benefit from using the following examples of general performance measures:

A. In the area to be served, increase the number of short-term housing units (or beds) that include access to related supportive services by an estimated "xx" by the end of the program year and that allow a client to maintain or to access permanent housing at the completion of the short-term program; for example, a short-term program that provides drug and/or alcohol abuse treatment and counseling or mental health services with an outplacement to housing.

B. In the area to be served, increase the number of housing units (or beds of supportive housing) by an estimated "xx" by the end of the program year; for example, a program designed to offer housing with access to service components which could assist clients in maintaining daily living activities through an appropriate range of support.

(2) Measurable Objectives

In addition to performance measures, more responsive programs are also likely to provide specific measurable objectives or milestones, i.e. a time sensitive statement of planned accomplishments. For measurable objectives or milestones, HUD will not consider the level of expectation described for each objective. An application that sets 85% for an objective is not necessarily "better" than one that sets 25% as a realistic numerical objective for achievement. Once a program is operating, the objectives become tools for monitoring the results that are being accomplished.

(3) Goal: Maximizing Independent Living

This goal refers to assisting persons with HIV/AIDS to avoid, to the maximum extent possible, institutional living and the expense of hospitalization by increasing the availability of housing alternatives. The housing to be provided may offer clients access to related supportive services that could assist a client in maintaining daily living activities through an appropriate range of support, including helping to prevent homelessness by assisting clients maintain their current residences. Efforts may also address the needs of HOPWA-eligible clients who are homeless by coordinating assistance with area Continuum of Care programs that assist persons who are homeless. The goal recognizes that the economic burdens imposed by diseases related to

HIV and AIDS can lead to homelessness and institutional living if assistance is not available to help persons with HIV/AIDS remain in their homes, with homecare as necessary, or move to community residences offering health care services or more intensive care in a non-institutional setting. This goal also recognizes that periods of hospitalization can be unnecessarily prolonged if housing and health care alternatives are not available.

Consistent with this goal, proposals should be designed to increase the availability of non-institutional housing alternatives. Because a single project funded under this notice cannot be expected by itself to address the range of needed housing alternatives, the proposed activities should be coordinated with other programs, to the maximum extent possible, to form networks that can respond to the needs of persons with HIV/AIDS and their families as those needs change over time. For example, HOPWA projects should be integrated with area Continuum of Care plans under the homeless assistance programs, to the degree that area needs include persons living with HIV/AIDS who are homeless. Programs should also show coordination with area health-care, rental assistance and other supportive services that are funded under the Ryan White CARE Act that is administered by the Department of Health and Human Services. This is necessary to help achieve a non-duplicative continuum of care approach to offering assistance to eligible persons.

Examples of measurable objectives for maximizing independent living. The following are examples of measurable objectives:

"X" persons with HIV/AIDS will be receiving rental assistance in the apartments in which they are currently living, with access to home health care and homemaker/chore services within "X" months.

"X" units in a community residence providing access to a range of health care and personal support, including intensive care, as needed, will become available within

"X" months through the acquisition and renovation of a small apartment building.

"X" persons with HIV/AIDS currently living in emergency shelters will move within

"X" months to scattered-site apartments with rental assistance and access to services.

(4) Goal: Maximizing Self-determination

This goal refers to the opportunities provided to participants to make informed decisions that affect their lives. Those opportunities could result from the participant's involvement in developing his or her individualized plan for housing and related supportive services, including participant selection of service providers. It could be shown in the opportunities to select available legal, therapeutic and other types of personal assistance, as well as educational, employment assistance, social, and volunteer activities made accessible through the program. This goal may also be achieved through client participation in advisory group meetings, such as residential councils, in efforts to evaluate and improve program procedures, comment on planned renovations to a community residence, and through other means of client expression within the program.

Examples of measurable objectives for maximizing self-determination. The following are examples of measurable objectives:

"X" percent of participants, who have a need for home health care, will choose their home health care provider within one month of entering the program;

"X" percent of a community resident's clients will attend a weekly resident advisory meeting that is held at least once a month;

"X" percent of the residents of the city's group homes for persons with HIV/AIDS will participate each year in completing a survey that evaluates the residential program.

(i) Application Certifications

The application under this NOFA also contains certifications that the applicant will comply, and require any project sponsor to comply, with fair housing and civil rights requirements, program regulations, and other Federal requirements. In addition, applications under this notice are required to file a Certification of Consistency with the Consolidated Plan from the jurisdiction in the proposed area to be served. Under 24 CFR Part 91, sections 225 for local governments and 325 for States, the jurisdiction is required to submit a certification in its annual consolidated plan submission that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. The Consolidated Plan certification is not required for an application that proposes nation-wide activities. In addition, MDI applicants are required to certify that they will participate in the MDI evaluation component.

(j) Nondiscrimination, Fair Housing and Accessibility

Projects funded under this NOFA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et. seq.*). All HUD-financed and insured new construction must be in compliance with the Fair Housing Act and programs must amend their inspection and certification procedures to provide for these provisions.

The requirements of 24 CFR 574.603 concerning nondiscrimination and equal oppportunity apply to use of the HOPWA funds. Applicants should note that, in accordance with paragraph (b) of that regulation, "[a] grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures."

The requirements of 24 CFR part 8, Nondiscrimination based on handicap in Federally assisted programs and activities of the Department of Housing and Urban Development, apply to the use of HOPWA funds. Section 8.1 addresses the purpose of this part "that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department * * *" In addition, the requirements of 24 CFR part 100, Discriminatory Conduct Under the Fair Housing Act, apply to the use of HOPWA funds.

The Department recommends that applications for assistance under this NOFA should emphasize how they will meet requirements for the accessibility of the housing to be provided to eligible persons. In addition to these requirements, the Department strongly encourages all applicants, especially those that use funds for new construction and/or substantial rehabilitation activities, to develop and/or provide housing that is visitable by persons with mobility impairments and

to insure accessibility for persons with disabilities to all aspects of the program. Under the visitability standard, accessible housing means that the unit is located on an accessible route (32" clear passage) and, when designed, constructed, altered or adapted, can be approached, entered and used by an individual with physical disabilities. Visitability involves two specifications: (1) At least one outside entrance is at grade (no steps or other barrier to a wheelchair), and (2) all interior and exterior doors provide a 32" clear passage.

The Department's Office of Policy Development and Research has issued the following guide which will be useful in designing appropriate modifications, including integrating universal design features that provide basic accessibility in entry and mobility throughout structures and contain other modifications that respond to the needs of clients with disabilities: *Homes for Everyone: Universal Design Principles in Practice.* To obtain this document, applicants should contact the HUD User information office at 1–800–245–2691 or 1–800–877–8339 (TTY).

II. Application Selection Process—New Grants

(a) Review and Clarifications

Applications will be reviewed to ensure that they meet the following:

(1) *Applicant eligibility.* The applicant and project sponsor(s), if any, are eligible to apply for the specific program;

(2) *Eligible population to be served.* The persons proposed to be served are eligible persons;

(3) *Eligible activities.* The proposed activities are eligible for assistance under the program;

(4) *Certification of Consistency with Area Consolidated Plans.* The proposed activities that are located in a jurisdiction are consistent with the jurisdiction's current, approved Consolidated Plan, except that this certification is not required for projects that propose to undertake activities on a national basis; and

(5) *Other requirements.* The applicant is currently in compliance with the federal requirements contained in 24 CFR part 574, subpart G, "Other Federal Requirements."

The Department will use the following standards to assess compliance with civil rights laws at the threshold review. In making this assessment, the Department shall review appropriate records maintained by the Office of Fair Housing and Equal Opportunity, e.g., records of monitoring, audit, or compliance review findings, complaint determinations, compliance agreements, etc. If the review reveals the existence of any of the following, the application will be rejected:

(A) There is a pending civil rights suit against the sponsor instituted by the Department of Justice.

(B) There is an outstanding finding of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, unless the applicant is operating under a HUD-approved compliance agreement designed to correct the area of noncompliance, or is currently negotiating such an agreement with the Department.

(C) There is an unresolved Secretarial charge of discrimination issued under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(D) There has been an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant is operating in compliance with a court order designed to correct the area of noncompliance or the applicant has discharged any responsibility arising from such litigation.

(E) There has been a deferral of the processing of applications from the sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 1.8) and procedures, or under Section 504 of the Rehabilitation Act of 1973 and the HUD Section 504 regulations (24 CFR 8.57).

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(b) Competition

This national competition will involve the review, rating and selection of applications under each of the three categories of assistance, including selection for the national HOPWA technical assistance funds. To rate applications, the Department may establish a panel or panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other federal agencies. The separate competition for additional funds for current MDI grantees is provided below in Section III and described in Section I(f)(4).

(c) Rating of Applications

(1) Procedure

Applications will be rated based on the criteria listed below. The criteria listed in paragraph (2) (A), (B), (C), and (D) are common for all applications. Paragraphs (3), (4) and (5) are specific for the category of assistance under which the application is being submitted. Ratings will be made with a maximum of 100 points awarded. After rating, these applications will be placed in the rank order of their final score for selection within the appropriate category of assistance, except that the proposals for the national HOPWA technical assistance activities will be placed in the rank order of their final score for selection under a separate selection list for the purposes of selecting the highest rated application or applications to be awarded the amounts reserved for national HOPWA technical assistance activities and applications that were not selected for the reserved amounts will be returned to the SPNS category of assistance for consideration under that selection list.

(2) Common Rating Criteria

Applications under the three categories of grant will be rated on the following four common criteria for up to 70 points:

(A) *Applicant and Project Sponsor capacity (20 points).* HUD will award up to 20 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed program, such as housing development, management of housing facilities or units, and service delivery, in relation to which entity is carrying out an activity. With regard to both the applicant and the project sponsor(s), HUD will consider: (a) past experience and knowledge in serving persons with HIV/AIDS and their families; (b) past experience and knowledge in programs similar to those proposed in the application; and (c) experience and knowledge in monitoring and evaluating program performance and disseminating information on project outcomes.

As applicable, the rating under this criterion will also consider prior performance with any HUD-administered programs, timeliness in implementing HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(B) *Need for the project in the area to be served (10 points).* HUD will award up to 10 points based on the extent to which the need for the project in the area to be served is demonstrated with

5 of these points to be determined by the relative numbers of AIDS cases and per capita AIDS incidence, as reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

After the other rating criteria have been determined for up to 95 points, HUD will award 5 of the points under this criterion for each category to the highest rated application in each state and to the highest rated application among the applications that propose nation-wide activities.

(C) *Appropriateness of program activities: housing, supportive services and other assistance (30 points).* HUD will award up to 30 points based on the extent to which a plan for undertaking and managing the proposed activities is coordinated with a community strategy and is responsive to the needs of clients.

(i) The award of points for coordination with a community strategy, for up to 10 of these points, will be based on how the proposal describes how activities were planned and are proposed to be carried out with HOPWA funds and other resources in order to provide a continuum of housing and services to meet the changing needs of eligible persons, such as the coordination of housing with access to health-care and other supportive services in area continuum of care efforts. Within the points available under this criterion, HUD will award three bonus points for projects that propose to locate activities within the boundaries of an area that has been designated an Empowerment Zone, Enterprise Community, Supplemental Empowerment Zone, or Enhanced Enterprise Community by the Secretary or by the Secretary of the Department of Agriculture, if priority placement will be given by the project: to eligible persons whose last known address was within the designated area; or to eligible persons who are homeless persons living on the streets or in shelters within the designated area.

Within the points available under this paragraph, HUD will award three place-based points for an application based on the assessment of the Secretary's Representative who is serving the area in which the project will be located. The Secretary's Representative shall consider prior HUD experience with the applicant and any project sponsor and the application's description of the applicant's and any project sponsor's participation in the development, operation or assessment of a State or local government strategy to address the housing and related health care or other supportive service needs of eligible persons in the area to be served. The views may include but are not limited to whether the entities evidence sufficient experience and/or ability to carry out the proposed activities in coordination with other related resources and that the proposed activities are consistent with and/or complement other related initiatives in the area to be served.

(ii) The award of points for responsiveness to the needs of clients, for up to 20 of these points, will be based on how the proposal:

(a) Describes and responds to the need for housing and related supportive services of eligible persons in the community; or, in relation to technical assistance activities proposed in the application, describes and responds to the technical assistance needs of programs which provide housing and related supportive services for eligible persons;

(b) Describes how activities will offer a personalized response to the needs of clients which maximizes opportunities for independent living, including accessibility of housing units and other structures, and in the case of a family, accommodates the needs of families;

(c) Provides for monitoring and the evaluation of the assistance provided to participants;

(d) In relation to technical assistance activities proposed in the application, provides technical assistance related to the development and operation of programs and the capacity of organizations to undertake and manage assistance for eligible persons;

(e) In relation to a safe haven, describes how the activities that will be carried out with HOPWA funds and other resources provide for the stabilization of clients, provide basic services in the safe haven, and provide coordination with other assistance; under this activity, HUD will consider how the safe haven proposal proposes to offer housing assistance for homeless persons with serious mental illness through a program that places minimal initial demands on residents and does not require participation in services but that also anticipates that safe haven residents, in time, will participate in mental health programs and/or substance abuse programs and move to or accept transitional or other supportive housing;

(f) In accordance with an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD will also consider the extent to which the proposal for the use of HOPWA funds will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low-income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may consider up to 2 points of the points available under this criterion based on this consideration.

(D) *Extent of leveraged public and private resources for the project (10 points).* HUD will award up to 10 points based on the extent to which resources from other public or private sources have been committed to support the project at the time of application. In establishing leveraging, HUD will not consider other HOPWA-funded activities, entitlement benefits inuring to eligible persons, or conditioned commitments that depend on future fund-raising or actions. In assessing the use of acceptable leveraged resources, HUD will consider the likelihood that state and local resources will be available and continue during the operating period of the grant.

(3) Additional Criterion for Special Projects of National Significance (30 points)

Applications for projects for this category of assistance will be rated on the *innovative nature of the proposal and its potential for replication, including the use of performance measures and the evaluation of activities.* HUD will award up to 30 points based on the extent to which the applicant demonstrates that:

(A) The project involves a new program for, or alternative method of, meeting the needs of eligible persons, when compared to other applications and projects funded in the past. The Department will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, and proposed activities are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past.

Within the points available under this criterion, HUD may award up to five bonus points for projects that propose to continue the operations of HOPWA funded activities that have been supported by HOPWA competitive funds in prior years and that have operated with reasonable success. An applicant has operated with reasonable success if it evidences that previous HOPWA-funded activities have been

carried out and funds have been used in a timely manner, that benchmarks, if any, in program development and operation have been met, and that the number of persons assisted is comparable to the number that was planned at the time of application. The Department recognizes that the clients which benefit under these projects may have only limited access to other HOPWA funds, except as provided through this national competition; and

(B) The project establishes performance measures, provides for the evaluation of activities based on those performance measures, and provides for the dissemination of information on the success of the proposed activities in assisting eligible persons and/or in establishing or operating systems of care for eligible persons.

(4) Additional Criterion for Projects under the HIV Multiple-Diagnoses Initiative (30 points)

Applications for Projects under this category of assistance will be rated on:

(A) *Innovative nature of the proposal and its potential for replication.* HUD will award up to 25 points based on the extent to which the project involves a new program for, or alternative method of, meeting the needs of the targeted population of eligible persons, when compared to other applications and projects funded in the past. The Department will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, and the likelihood that activities will benefit the targeted population of eligible persons and proposed activities are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past.

Within the points available under this criterion, HUD may award up to five bonus points for projects that propose to continue the operations of HOPWA funded activities that have been supported by HOPWA competitive funds in prior years and that have operated with reasonable success. An applicant has operated with reasonable success if it evidences that previous HOPWA-funded activities have been carried out and funds have been used in a timely manner, that benchmarks, if any, in program development and operation have been met, and that the number of persons assisted is comparable to the number that was planned at the time of application. The Department recognizes that the clients which benefit under these projects may have only limited access to other HOPWA funds, except as provided through this national competition; and

(B) *Performance measures and national MDI evaluation.* HUD will award up to 5 points to an applicant that establishes performance measures and agrees to fully participate in the national MDI evaluation component.

(5) Additional Criterion for Projects Which are Part of Long-Term Comprehensive Strategies for Providing Housing and Related Services (30 points).

Applications for projects for this category of assistance will be rated on the extent of local planning and coordination of housing programs, including the use of performance measures and the evaluation of activities. HUD will award up to 30 points based on the extent to which the applicant demonstrates:

(A) The proposed project is part of a community strategy involving local, metropolitan or state-wide planning and coordination of housing programs designed to meet the changing needs of low-income persons with HIV/AIDS and their families, including programs providing housing assistance and related services that are operated by federal, state, local, private and other entities serving eligible persons.

Within the points available under this criterion, HUD may award up to five bonus points for projects that propose to continue the operations of HOPWA funded activities that have been supported by HOPWA formula or competitive funds in prior years and that have operated with reasonable success. An applicant has operated with reasonable success if it evidences that previous HOPWA-funded activities have been carried out and funds have been used in a timely manner, that benchmarks, if any, in program development and operation have been met, and that the number of persons assisted is comparable to the number that was planned at the time of application. The Department recognizes that the areas which benefit under this category of assistance currently have no other access to HOPWA funds except as provided through this national competition; and

(B) Establishes performance measures, provides for the evaluation of activities based on those performance measures, and provides for the dissemination of information on the success of the proposed activities in assisting eligible persons and/or in establishing or operating systems of care for eligible persons.

(d) Selection of Awards

Whether an application is conditionally selected will depend on its overall ranking compared to other applications within each of the three categories of assistance, and for an application that proposes national HOPWA technical assistance, with any other applications that propose similar activities. The Department will select applications to the extent that funds are available. In allocating amounts to the categories of assistance, HUD reserves the right to ensure that a minimum number of applications under each category of assistance are among the conditionally selected applications. HUD reserves the right to fund less than the full amount requested in any application and to make mathematical corrections.

HUD reserves the right to achieve greater geographic diversity (i.e. resulting in funding activities within a variety of states) by selecting a lower rated application. In selecting a lower rated application in order to achieve greater geographic diversity under this paragraph, HUD will not select an application that is rated below 50 points.

In the event of a tie between applications in a category of assistance, HUD reserves the right to break the tie: by selecting the proposal that increases geographic diversity; and, if not greater geographic diversity is achievable, by subsequently designating as the higher rated proposal, that proposal which was scored higher on a rating criterion, taken in the following order until the tie is broken: the category specific criterion under Section II (c) paragraphs (3), (4), or (5); the appropriateness of program activities; the applicant and project sponsor capacity criterion; the need for the project criterion; and the extent of leveraged resources criterion.

In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible application during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

HUD will notify conditionally selected applicants in writing. Such applicants will subsequently be notified of any modification made by HUD, the additional project information necessary for grant award and the date of deadline for submission of such information. In the event that a conditionally-selected applicant is unable to meet any conditions for fund award within the specified timeframe or funds are deobligated under a grant awarded under this competition, HUD reserves

the right not to award funds to the applicant, but instead to: use those funds to make awards to the next highest rated applications in this competition; to restore amounts to a funding request that had been reduced in this or in a prior year competition; or to add amounts to funds available for the next competition.

III. Application Selection Process—Current MDI Grants

(a) General Requirements

All requirements of this NOFA apply also to this selection, except as otherwise noted herein. The amounts available under this section are provided in addition to and are not subject to the limitation in paragraph I(c)(2) on the amount that the applicant may otherwise qualify for under the selection process for new grants.

(b) Eligible Applicants

An eligible applicant under this selection is an entity that was selected for a MDI award under the 1996 HOPWA competition. The 1996 NOFA was published in the **Federal Register** on February 28, 1996 (61 FR 7664) and the notice of funding awards was published on October 23, 1996 (61 FR 55009). In regard to determining eligibility, the review process contained in Section II has been reduced. Based on the information provided in the application under paragraph (e), HUD will determine if an applicant is eligible. Since the eligible applicants are limited to current recipients of HOPWA MDI grants, the Department will not otherwise require applicants to duplicate their submission of documentation to determine the applicant's eligibility, that an eligible population is to be served, that eligible activities will be undertaken and that the applicant is in conformance with other requirements. The Department is satisfied that the review that was undertaken for these entities in the 1996 MDI competition, for which these entities were determined to be eligible, is sufficient for the award of these additional funds.

(c) Eligible Activities

As described in paragraph I(f)(5), a current MDI grantee may also apply for up to $50,000 in additional funds to be used in modifying and expanding the planned evaluation of project performance and dissemination of information on project outcomes and in acquiring the services of the Evaluation Technical Assistance Center. Applicants under this section are not required to establish additional performance measures.

(d) Rating Factors

The rating factors contained in Section II have been modified and the leveraging criterion was eliminated. Applications for funds under this section from current MDI grantees will be rated, with a maximum of 100 points awarded, on the following:

(1) *Applicant and Project Sponsor capacity (25 points).* HUD will award up to 25 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate their current MDI project and to undertake the proposed additional evaluation activities. HUD will consider their prior performance on the 1996 MDI project.

(2) *Need for the project in the area to be served (5 points).* HUD will award up to 5 points based on the extent to which the need for the project in the area to be served is demonstrated by the relative numbers of AIDS cases and per capita AIDS incidence, as reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

(3) *Appropriateness of program activities (25 points).* HUD will award up to 25 points based on the extent to which a plan for undertaking and managing the proposed activities describes and responds to the need for additional support to complete, modify and/or expand evaluation activities in regard to a MDI program that provides housing and related supportive services for eligible persons;

(4) *Additional Criterion for Special Projects of National Significance—HIV Multiple-Diagnoses Initiative (45 points).*

(A) HUD will award up to 5 points for *the innovative nature of the proposal and its potential for replication*, based on the extent to which the project involves a new or alternative method for carrying out evaluation activities and the extent to which the proposed evaluation activities, the relationship of these activities to related local planning and coordination of housing programs for eligible persons, are exemplary or appropriate as a model for replication in similar localities or nationally; and

(B) HUD will award up to 40 points for *evaluation and dissemination*, based on the extent to which the applicant describes an evaluation and dissemination plan that includes an assessment of the assistance provided to clients, based on HUD's assessment of the extent to which the plan will ensure that activities are undertaken in a timely manner and that funds are expended within the planned use period.

(e) Applications

The application requirements have been modified. An eligible applicant under this section is not required to resubmit their 1996 application or to submit their 1997 application based on the form that is made available for applicants under section II, except as noted below in using the SF–424 and the HOPWA Applicant Certifications (see item B of Statutory Certifications). An applicant under this section is required to submit each of the following items:

(a) a signed SF–424;

(b) a signed HOPWA Applicant Certifications; and

(c) a letter or other written document of approximately one page that requests an amount (up to $50,000) and describes the applicant's need for and plan to use additional funds to complete, modify and/or expand the planned program development and evaluation efforts under its 1996 award.

(f) Selection Process

The selection process contained in Section II has been modified. An applicant that meets the review criteria in section (b), must have a rating score of at least 50 points in order to be funded. Applicants will not be ranked for this selection. There is sufficient funding for all eligible applications under this section.

IV. Other Matters

Environmental Impact

This NOFA provides funding under, and does not alter the environmental requirements of, regulations in 24 CFR part 574. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Activities under this NOFA are subject to the environmental review provisions set out at 24 CFR 574.450.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the HOPWA program.

Accountability in the Provision of HUD Assistance

HUD's regulation implementing section 102 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 12, contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. Additional information on the implementation of section 102 was published on January 16, 1992 at 57 FR 1942. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish notice of awards made in response to this NOFA in the **Federal Register.**

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition on Advance Release of Funding Information

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 4, applies to the funding competition announced today. The requirements of that rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Ethics Law Division (202) 708–3815 (this is not a toll-free number). A telecommunications device for hearing-and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). The Ethics Law Division can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. A standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying," must be used to disclose lobbying with other than federally appropriated funds at the time of application.

Drug-Free Workplace Certification

In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD–50070).

Dated: May 1, 1997.

Jacquie Lawing,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A.—List of HUD Area CPD Offices (as of 2–20–97)

In addition to filing the original application with HUD Headquarters, as described in the NOFA, applicants are required to submit two (2) copies of the application to the HUD CPD office serving the area in which the applicant's project is located; applicants proposing nation-wide activities should file the two (2) copies with the original application to HUD Headquarters. This appendix provides a list of the CPD Directors in those area CPD offices.

Telephone numbers for Telecommunications Devices for the Deaf (TTY machines) are listed for CPD Directors in HUD Field Offices; all HUD numbers, including those noted *, may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339).

Alabama
William H. Dirl, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 290–7645; TTY (205) 290–7624.

Alaska
Colleen Bickford, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–4684; TTY (907) 271–4328.

Arizona
Martin H. Mitchell, Two Arizona Center, Suite 1600, 400 N. 5th St., Phoenix, AZ 85004; (602) 379–4754; TTY (602) 379–4461.

Arkansas
Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TTY (501) 324–5931.

California
(Southern) Herbert L. Roberts, 611 West Sixth St., Suite 800, Los Angeles, CA 90017–3127; (213) 894–8026; TTY (213) 894–8133.
(Northern) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 436–6597; TTY (415) 436–6594.

Colorado
Guadalupe M. Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Connecticut
Mary Ellen Morgan, 330 Main St., Hartford, CT 06106–1866; (860) 240–4508; TTY (860) 240–4665.

Delaware
Joyce Gaskins, Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107; (215) 656–0624; TTY (215) 656–3452.

District of Columbia (and MD and VA suburbs)
James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0994; TTY (202) 275–0772.

Florida
(Northern) James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–

5121; (904) 232–3587; TTY (904) 232–1241.
(Miami-So. Dade) Angelo Castillo, Gables Tower 1, 1320 South Dixie Hwy., Coral Gables, FL 33146–2911; (305) 662–4570; TTY (305) 662–4511.

Georgia
John L. Perry, Russell Fed. Bldg., Room 270, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TTY (404) 730–2654.

Hawaii (and Pacific)
Patty A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 522–8180 x264; TTY (808) 522–8193.

Idaho
John G. Bonham, 400 S.W. Sixth Ave., Suite 700, Portland, OR 97204–1632 (503) 326–7012; TTY * via 1–800–877–8339.

Illinois
James Barnes, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TTY (312) 353–5944.

Indiana
Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TTY * via 1–800–877–8339.

Iowa
Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TTY (402) 492–3183.

Kansas
William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TTY (913) 551–6972.

Kentucky
Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–6141; TTY 1–800–648–6056.

Louisiana
Gregory J. Hamilton, 501 Magazine St., New Orleans, LA 70130; (504) 589–7212; TTY (504) 589–7237.

Maine
David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TTY (603) 666–7518.

Maryland
Joseph J. O'Connor, Acting Director, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520 x3071; TTY (410) 962–0106.

Massachusetts
Robert L. Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TTY (617) 565–5453.

Michigan
Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TTY * via 1–800–877–8339.

Minnesota
Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TTY (612) 370–3185.

Mississippi
Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TTY (601) 965–4171.

Missouri
(Eastern) James A. Cunningham, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TTY (314) 539–6331.
(Western) William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TTY (913) 551–6972.

Montana
Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Nebraska
Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TTY (402) 492–3183.

Nevada
(Las Vegas, Clark Cnty) Martin H. Mitchell, Two Arizona Center, Suite 1600, 400 N. 5th St., Phoenix, AZ 85004; (602) 379–4754; TTY (602) 379–4461.
(Remainder of State) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 436–6597; TTY (415) 436–6594.

New Hampshire
David J. Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TTY (603) 666–7518.

New Jersey
Kathleen Naymola, Acting Director, 1 Newark Center, Newark, NJ 07102; (201) 622–7900x3300; TTY (201) 645–3298.

New Mexico
Frank Padilla, 625 Truman St. N.E., Albuquerque, NM 87110–6472; (505) 262–6463; TTY (505) 262–6463.

New York
(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 551–5768; TTY * via 1–800–877–8339.
(Downstate) Joseph D'Agosta, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–0771; TTY (212) 264–0927.

North Carolina
Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4006; TTY (910) 547–4055.

North Dakota
Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Ohio
John E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TTY (614) 469–6694.

Oklahoma
David H. Long, 500 West Main Place, Suite 400, Oklahoma City, OK 73102; (405) 553–7569; TTY * via 1–800–877–8339.

Oregon *
John G. Bonham, 400 S.W. Sixth Ave., Suite 700, Portland, OR 97204–1632 (503) 326–7012; TTY * via 1–800–877–8339.

Pennsylvania
(Western) Bruce Crawford, 339 Sixth Ave., Pittsburgh, PA 15222–2515; (412) 644–5493; TTY (412) 644–5747.
(Eastern) Joyce Gaskins, Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107; (215) 656–0624; TTY (215) 656–3452.

Puerto Rico (and Caribbean)
Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (787) 766–5576; TTY (787) 766–5909.

Rhode Island
Robert L. Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TTY (617) 565–5453.

South Carolina
Louis E. Bradley, Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765–5564; TTY (803) 253–3071.

South Dakota
Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Tennessee
Virginia E. Peck, John J. Duncan Federal Bldg., Third Floor, 710 Locust St. S.W., Knoxville, TN 37902–2526; (423) 545–4391; TTY (423) 545–4559.

Texas
(Northern) Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 978–9016; TTY (817) 978–9274.
(Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 472–6820; TTY (210) 472–6885.

Utah
Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Vermont
David J. Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TTY (603) 666–7518.

Virginia
Joseph K. Aversano, 3600 W. Broad St., Richmond, VA 23230–4920; (804) 278–4503; TTY (804) 278–4501.

Washington *
John W. Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TTY (206) 220–5185.

West Virginia
Bruce Crawford, 339 Sixth Ave., Pittsburgh, PA 15222–2515; (412) 644–5493; TTY (412) 644–5747.

Wisconsin
Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TTY * via 1–800–877–8339.

Wyoming
Guadalupe Herrera, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TTY (303) 672–5248.

Appendix B. Areas Eligible To Receive HOPWA 1997 Formula Allocations and not Eligible for Long-Term Projects

The following are the areas that are eligible to receive HOPWA formula allocations in FY

* The following areas in Washington State are served by the Oregon CPD office: Clark, Klickitat and Shamania Counties.

1997. State or local governments located in or serving eligible persons in these areas are *only eligible to apply for grants for Special Projects of National Significance* under the HOPWA 1997 competition. The Long-term category of assistance, grants for projects that are part of long-term comprehensive strategies for providing housing and related services, is reserved by statute for areas that are not eligible to receive HOPWA formula awards, i.e. any area outside of the list below.

1. 1997 formula allocations are available for all areas in the States of:

Alabama
Arkansas
California
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Illinois
Indiana
Kentucky
Louisiana
Massachusetts
Michigan
Mississippi
New Jersey
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
Puerto Rico
South Carolina
Tennessee
Texas
Washington State
Wisconsin.

2. 1997 formula allocations are available for all areas in the following metropolitan areas in the States of Arizona, Colorado, Kansas, Maryland, Minnesota, Missouri, Nevada, New Hampshire, Oregon, Virginia and West Virginia:

1120 Boston MA–NH PMSA (part)
Rockingham County, NH (part):
Seabrook town, NH
South Hampton town, NH
0720 Baltimore, MD PMSA
Anne Arundel County, MD
Baltimore County, MD
Carroll County, MD
Harford County, MD
Howard County, MD
Queen Anne's County, MD
Baltimore City, MD
6760 Richmond-Petersberg, VA MSA
Charles City County, VA
Chesterfield County, VA
Dinwiddie County, VA
Goochland County, VA
Hanover County, VA
Henrico County, VA
New Kent County, VA
Powhatan County, VA
Prince George County, VA
Colonial Heights city, VA
Hopewell city, VA
Petersberg city, VA
Richmond city, VA
8840 Washington, DC–MD–VA–WV PMSA
Calvert County, MD
Charles County, MD
Frederick County, MD
Montgomery County, MD
Prince George County, VA
Arlington County, VA
Clarke County, VA
Culpeper County, VA
Fairfax County, VA
Fauquier County, VA
King George County, VA
Loudoun County, VA
Prince William County, VA
Spotsylvania County, VA
Stafford County, VA
Warren County, VA
Alexandria City, VA
Fairfax City, VA
Falls Church City, VA
Fredericksburg City, VA
Manassas City, VA
Manassas Park City, VA
Berkeley County, WV
Jefferson County, WV
5720 Norfolk-Virginia Beach-Newport News, VA–NC MSA
Gloucester County, VA
Isle of Wight County, VA
James City County, VA
Mathews County, VA
York County, VA
Chesapeake city, VA
Hampton city, VA
Newport News city, VA
Norfolk city, VA
Poquoson city, VA
Portsmouth city, VA
Suffolk city, VA
Virginia Beach city, VA
Williamsburg city, VA
5120 Minneapolis-St. Paul, MN–WI MSA (part)
Anoka County, MN
Carver County, MN
Chisago County, MN
Dakota County, MN
Hennepin County, MN
Isanti County, MN
Ramsey County, MN
Scott County, MN
Sherburne County, MN
Washington County, MN
Wright County, MN
3760 Kansas City, MO–KS MSA (part)
Cass County, MO
Clay County, MO
Clinton County, MO
Jackson County, MO
Lafayette County, MO
Platte County, MO
Ray County, MO
Johnson County, KS
Leavenworth County, KS
Miami County, KS
Wyandotte County, KS
7040 St. Louis, MO–IL MSA (part)
Crawford County, MO (part): Sullivan City, MO
Franklin County, MO
Jefferson County, MO
Lincoln County, MO
St. Charles County, MO
St. Louis County, MO
Warren County, MO
St. Louis City, MO
2080 Denver, CO PMSA
Adams County, CO
Arapahoe County, CO
Denver County, CO
Douglas County, CO
Jefferson County, CO
6200 Phoenix-Mesa, AZ MSA
Maricopa County, AZ
Pinal County, AZ
4120 Las Vegas, NV–AZ MSA
Clark County, NV
Nye County, NV
Mohave County, AZ
6440 Portland-Vancouver, OR–WA PMSA (part)
Clackamas County, OR
Columbia County, OR
Multnomah County, OR
Washington County, OR
Yamhill County, OR

Appendix C.—Frequently Asked Questions (FAQ) on the 1997 HOPWA Competition

1. How do you define "Special Projects of National Significance?"

Grants for Special Projects of National Significance (SPNS) and grants under the HIV Multiple-Diagnoses Initiative (MDI) component, will be made for proposals that demonstrate qualities that are innovative, exemplary and appropriate as a model to be replicated in other similar localities. Such qualities may be demonstrated in any of the eligible activities, such as housing assistance, supportive services, technical assistance, and others and may involve, for example, how activities will adapt to the changing needs of clients or filling gaps in community efforts to provide access to a comprehensive range of care. HUD will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, and proposed activities are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past. Examples of SPNS and MDI grants from prior competitions can be found under the HOPWA listing on the HUD HOME page on the World Wide Web at *http://www.hud.gov/fundopp.html.*

2. What do you mean by performance measures?

General performance measures and specific measurable objectives or milestones are required for all three types of proposals and are discussed in the NOFA. A general performance measure will establish the overall goal of a proposal such as the number of short-term housing and number of supportive housing units to be added in a community during an operating period with grant funds. A measurable objective or milestone is a specific, achievable and time-limited statement of how an activity will help obtain the overall goals of a program. An example of a measure is "25 persons with HIV/AIDS currently in emergency shelters will move within 6 months to scattered-site apartments with rental assistance and access to services." The measure will be a tool for the project for monitoring the results and noting the milestones that are being accomplished as the funded activities are undertaken. A special focus of the MDI component involves participation in

evaluations of actual program performance under the established performance measures to better understand what works to assist these clients and to disseminate information on such findings as model efforts.

3. Can a city or State that is a HOPWA formula recipient also apply for a Special Project of National Significance?

Yes. Both types of grants, SPNS and MDI, are available to all States, localities and non-profit organizations. Only the Long-term component is reserved for certain areas, those that are not part of a formula HOPWA allocation.

4. Can an agency submit a Continuum of Care homeless assistance application and a HOPWA proposal which will be linked but not identical?

Yes. You can apply for funding under both competitions and other Federal funds that may be available. A HOPWA grant and a Continuum of Care grant may serve the same group of clients but with distinct activities that may complement but not duplicate the other HUD-funded activities. If the activities are duplicated in the two applications, HUD will ensure that an activity will only be funded from one source; however, if they are dependent on each other, they must still compete under the separate competitions. If they do not duplicate the same activities for the same participants, then both may be funded.

5. As an applicant, we plan to carry out activities directly. Can we qualify for both the grantee's (3%) as well as the sponsor's (7%) administrative costs?

No. A grantee is limited to using no more than three (3) percent of the grant amount for administering the grant, such as providing general management, oversight, coordination, evaluation and reporting on activities. Please note that costs of staff that are carrying out the program activities may be included in those program activity costs, including prorating costs between categories as may be appropriate. A sponsor is eligible to use up to seven (7) percent of the amount that they receive for the sponsor's administrative costs.

6. Can a HOPWA program be designated to assist homeless and large families only?

Yes, to the degree that a program responds to the greater or specialized needs of eligible persons, for example, you can look at homelessness as a greater need and try to serve those in the greatest need as a priority in selecting participants. Program features might also be appropriate for certain clients, such as housing units with larger number of bedrooms to serve large families. However, as required by law and provided under the certifications, programs are required to comply with nondiscrimination and equal opportunity requirements.

7. We have applied to IRS for a 501(c)(3) designation but we have not received it yet. Can we apply? If not, can we go to the state or another non-profit and partner with them and come in under their application?

Nonprofit organizations that are either the applicant or a project sponsor must either; (a) have an IRS ruling that provides your tax exempt status under Sec. 501(c)(3) of the IRS Code by the application due date; or (b) provide documentation that shows that the organization satisfies the criteria provided by the statutory definition of non-profit organization found at 42 U.S.C. 12902 (13) or your organization cannot serve in those capacities.

The statutory definition reads: "The term "nonprofit organization" means any nonprofit organization (including a State or locally chartered, nonprofit organization) that—(A) is organized under State or local laws; (B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; (C) complies with standards of financial accountability acceptable to the Secretary; and (D) has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases."

The Department interprets this definition to include the following: (a) in lieu of a IRS exemption for nonprofits in Puerto Rico, a ruling from the Treasury Department of the Commonwealth of Puerto Rico granting income tax exemption under Section 101 of the Income Tax Act of 1954, as amended (13 LPRA 3101);

(b) that documentation of an IRS ruling of tax exempt status under Sec. 501(c)(4), (6), (7), (9) or (19) is acceptable in lieu of the Sec. 501(c)(3) documentation;

(c) that in lieu of the IRS ruling, a nonprofit organization may provide documentation to evidence that it satisfies the statutory definition; HUD would consider as satisfactory the submission of the following four items: (1) a certification by the appropriate official of the jurisdiction under whose laws the nonprofit organization was organized, that the organization was so organized and is in good standing; (2) documentation showing that the organization is a certified United Way member agency or other documentation that shows that no inurement of benefits will occur; (3) documentation from a CPA or Public Accountant that the organization has a functioning accounting system that is operated in accordance with generally acceptable accounting principles or that a qualifying entity is designated for that activity, or the United Way member agency certification noted in item 2; and (4) a certified copy of the nonprofit organization's articles of incorporation, by-laws, statement of purposes, board of director's resolution or a similar document which includes a provision demonstrating its purpose regarding significant activities for persons living with HIV/AIDS; and

(d) that the term "related diseases" includes HIV infection.

If your organization does not provide the requested documentation, the organization would not be eligible to receive funds and serve as the grantee or as a project sponsor. However, you could collaborate with eligible nonprofit organizations (e.g. which have the 501(c)(3) designation) or with a government agency that applies for the grant and assist them, for example, in planning for the proposed activities, identifying needs in your community and identifying clients who will be assisted. Eligible grantees and project sponsors may also contract out services that are funded by this grant.

8. Renewals. Can an existing HOPWA program funded for up to a three-year period through a prior HOPWA competitive grant program apply for additional 1997 HOPWA funds to supplement or continue the same program?

Yes. (1) Under the SPNS and MDI components, it is possible for existing grantees to propose and be selected in order to continue the same activities, or, alternatively, to provide additional activities that expand on or modify what the current grant is accomplishing. For example, in addition to their model features, an existing SPNS or MDI grant may contain innovative features; if that applicant proposes activities that only continue existing activities, the application would not be viewed as innovative nor receive rating points associated with innovation but that application may still be selected based on its other qualities. If HUD determines that a project has been reasonably successful under a prior HOPWA competitive grant, a proposal to continue its operations may be given up to 5 bonus points, even if the proposal contains no new innovative approaches.

As an alternative, your proposal may be based on your existing program but propose additional features that benefit recipients; for example, you may want to apply some new things you learned from the program you operate or want to try a new approach, that might be considered innovative and awarded points on that basis.

(2) If your existing project was selected under the Long Term component, you could seek additional funds to continue assistance in this competition based on your eligibility for this category and its criteria. If HUD determines that a project has been reasonably successful, a proposal to continue its operations may be given up to 5 bonus points. If, in the alternative, your area now qualifies for a formula allocation, you are not eligible to apply for the Long-term category of funds in this competition; in this case, you may apply under the SPNS or MDI categories or you could seek formula HOPWA funds that are available from your area's State or city grantee for your project.

For all three categories of assistance, an applicant will be deemed to have operated with reasonable success if it evidences in its application that previous HOPWA-funded activities have been carried out and funds have been used in a timely manner, that benchmarks, if any, in program development and operation have been met, and that the number of persons assisted is comparable to the number that was planned at the time of application. For example, if program funds were to be expended during a three year operating period, and the grant agreement was signed two years ago, timely expenditure would mean that approximately two-thirds or more of program funds have been expended under that prior grant.

(3) Current MDI grantees may apply under section III for up to $50,000 in additional funds to complete, modify and/or expand the evaluation of MDI projects that were selected in the 1996 HOPWA competition. The program requirements for this separate selection process for current MDI grants are described in Section I(f)(4) and are provided in Section III of the NOFA.

9. Formula recipients. Can an area that previously received a HOPWA formula allocation, but no longer receives such funding, apply for additional 1997 HOPWA competitive funds to supplement or continue the same program?

Yes, but only in special circumstances that are noted in the paragraph below. The Department does not intend to use the limited amount of funds available in this competition to renew projects to continue activities that have been supported under HOPWA formula allocations and may continue to do so by formula grantee discretion.

Under the Long-term category, the NOFA recognizes that certain areas that are not eligible for a formula allocation in fiscal year 1997, may have been eligible in a prior year and may have existing projects that were previously funded under a formula allocation. In such cases, the Department recognizes that the existing projects do not have any other access to HOPWA funds and that, if HUD determines that a project is reasonably successful, a proposal to continue its operations may be given up to 5 bonus points.

10. If alcoholism, chemical dependency or mental illness is suspected or observed in a person living with AIDS, but undiagnosed clinically, can the MDI funds be used as a vehicle for diagnosis?

Yes. You can determine your outreach and client assessment procedures which may specify the types of documentation within reasonable flexibility. For example, designing new methods for reaching and serving persons who are homeless who are often hard-to-reach might be part of your proposed innovation. HOPWA funds can be used to determine eligibility for program participation.

11. As a non-profit organization, must we obtain a certification that the application is consistent with our city or state's consolidated plan?

Yes, the certification of consistency with the area consolidated plan is required. The Department initiated the consolidated planning process to improve our partnership with communities in addressing area needs. As a change from prior competitions, a certificate of consistency with the area comprehensive plan is required under this NOFA for non-profits applying for a SPNS or MDI grant. The certification continues to be required for city and State applications, including the activities that are carried out by a nonprofit serving as a project sponsor. An exception is made for proposals that plan to undertake activities on a national basis.

12. If we request HOPWA funds for supportive services, will that impact our application's competitiveness?

No. You can apply for any eligible activity, alone or in combination with others. The application notes that in the case of a services-only proposal, you should identify how the recipients are currently in housing or will be receiving housing assistance from some other source.

13. Currently, our city is a HOPWA formula recipient. Does this eliminate or disqualify non-profits for applying for competitive funds under HOPWA?

No. Nonprofit organizations located in a HOPWA formula area can apply for a HOPWA competitive grant under the SPNS or MDI components. The nonprofit could apply directly or as a sponsor in an application from a State or local government for the SPNS or MDI grant. The nonprofit might also seek funding under the formula allocation (which constitutes ninety percent of the annual program appropriation) from the city or State that is serving as the grantee. Since formula funds are available in that area, an application under the Long-term category is not eligible.

14. Is it correct that we don't submit our own MDI evaluation dissemination plan since we plan to participate in the evaluation component? Will our application still be awarded points for this?

Yes. For a MDI application, if you establish performance measures and agree to participate in the evaluation component by signing the MDI participation agreement certification, your application will receive the full 5 points. As a condition for the MDI grant, the NOFA describes the role of the ETAC evaluator that will be assigned to the selected MDI grants. Once selected, HUD will work with grantees to initiate their project, design methods to monitor performance and create evaluation procedures and methods to disseminate information on the program. MDI grants will also receive an additional $170,000 to ensure support for an effective program evaluation effort, of which up to $90,000 would be used for local activities and participation in conferences and $80,000 would be used to acquire the described ETAC services.

15. Can a public housing agency (PHA) apply for these funds? Can a PHA serve as a project sponsor?

Yes, in some cases. A public housing agency that is a functional part of a State or a unit of general local government may serve as the applicant/grantee on behalf of that unit of government. In cases where the PHA is an independent special purpose agency, the PHA could not serve as the applicant/grantee but may assist another qualified applicant/grantee as a project sponsor. If applying as the grantee, the PHA should use item 7 on the SF–424 to designate if it is an functional part of the State or a unit of general local government, and provide its PHA number on the Applicant Certifications, as requested.

FOR FURTHER INFORMATION AND TECHNICAL ASSISTANCE CONTACT: The Community Connections information center at 1–800–998–9999 (voice); 1–800–483–2209 (TTY) or by email at *comcon@aspensys.com*.

For answers to your questions, you have several options: you may contact the HUD CPD office that serves your area, at the phone and address shown in the appendix; you may contact the Community Connections information center noted above; or you may contact the Office of HIV/AIDS Housing at 1–202–708–1934 (voice) or by 1–800–877–8339 (TTY) at the U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7154, Washington, DC 20410.

[FR Doc. 97–11881 Filed 5–2–97; 4:43 pm]

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federal register

Wednesday
May 7, 1997

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 544

Postsecondary Education Programs for Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1035–F]

RIN 1120–AA35

Postsecondary Education Programs for Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on Postsecondary Education Programs for Inmates in order to clarify requirements for tuition funding sources and to make various administrative changes in the operation of the program. The intent of this regulation is to provide for the more efficient use of Bureau resources.

EFFECTIVE DATE: May 7, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Postsecondary Education Programs for Inmates. A final rule on this subject was published in the **Federal Register** June 29, 1979 (44 FR 38249).

Existing regulations for Postsecondary Education Programs for Inmates allowed institutions the discretion to pay for the costs of college-level courses. The decision to provide payment in such cases depended upon Bureau resources, the availability of other sources of support, and a determination as to participation being an appropriate or a necessary component of the inmate's correctional program. In cases where participation was determined to be a necessary component of the inmate's correctional program, the institution was authorized to pay total costs for courses and related expenses; in cases where participation was determined to be an appropriate component of the inmate's correctional program, the institution was authorized to pay up to 50 percent of the costs for courses and related expenses.

As revised, these provisions have been simplified to clarify those conditions under which the Bureau may pay for tuition. As revised, the provisions in new § 544.23(d) specify that the Bureau may pay for tuition, as institution resources allow, if the inmate is unable to pay using personal funds or other sources, and that the course is part of a one year certificate or two year Associate Arts degree program directly related to preparation for a specific occupation/vocation. No distinction is made as to whether participation is necessary rather than merely appropriate.

Additional changes include the following. Section 544.20 has been revised for the sake of conciseness. Provisions in that section defining "postsecondary education programs" (formerly described as "college-level courses") have been transferred to a new § 544.21. Provisions specifying that the Warden shall establish procedures for implementation of college-level courses have been redelegated to a postsecondary education coordinator in new § 544.23 (a).

New § 544.22 specifies that inmates ordinarily shall be required to have a verified high school diploma or General Educational Development (GED) certificate prior to enrollment in a college-level (degree) program. This requirement conforms to normal existing enrollment requirements of the educational institutions which provide the coursework.

New § 544.23 contains procedures for the further operation of postsecondary education programs. Paragraph (a) specifies that the Warden or designee shall appoint a postsecondary education coordinator (ordinarily an education staff member) who shall be responsible for coordinating the institution's postsecondary education program. Paragraphs (b) and (c) provide procedures for unit team review and application. As noted above, paragraph (d) simplifies and consolidates the provisions of former §§ 544.21 regarding funding sources for payment of tuition.

Because this amendment imposes no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons certifies that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart C, consisting of §§ 544.20 through 544.21, is revised to consist of §§ 544.20 through 544.23 to read as follows:

Subpart C—Postsecondary Education Programs for Inmates

Sec.

544.20 Purpose and scope.
544.21 Definition.
544.22 Enrollment requirements.
544.23 Procedures.

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons offers interested inmates the opportunity to participate in postsecondary education programs whenever staff recommends such enrollment to meet a correctional goal.

§ 544.21 Definition.

The term *postsecondary education programs* as defined in this subpart shall include courses of study, including correspondence courses, provided by junior or community colleges, four-year colleges and

universities, and postsecondary vocational or technical schools.

§ 544.22 Enrollment requirements.

Inmates ordinarily shall be required to have a verified high school diploma or General Educational Development (GED) certificate prior to enrollment in a college-level (degree) program.

§ 544.23 Procedures.

(a) The Warden or designee shall appoint a postsecondary education coordinator (ordinarily an education staff member) who shall have the responsibility for coordinating the institution's postsecondary education program.

(b) An inmate who wishes to participate in a postsecondary education program must meet with his or her unit team to determine if such participation meets an appropriate correctional program goal.

(c) If unit team staff agree that the inmate's participation meets an appropriate correctional goal, the inmate may apply through the postsecondary education coordinator.

(d) The inmate is expected to pay the tuition from personal funds or other sources. If resources allow, the institution may pay the tuition if all of the following apply:

(1) The inmate is unable to pay for the tuition from personal funds or other sources;

(2) The course is directly related to preparation for a specific occupation/vocation;

(3) The course is part of a one year certificate or a two year Associate Arts degree program.

[FR Doc. 97–11883 Filed 5–6–97; 8:45 am]
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federal register

Wednesday
May 7, 1997

Part VI

The President

Proclamation 6998—Asian/Pacific American Heritage Month, 1997

Federal Register
Vol. 62, No. 88
Wednesday, May 7, 1997

Presidential Documents

Title 3—

The President

Proclamation 6998 of May 5, 1997

Asian/Pacific American Heritage Month, 1997

By the President of the United States of America

A Proclamation

Today, almost 10 million Americans can trace their roots to Asia and the Pacific Islands. This month provides a wonderful opportunity to recognize and celebrate all the ways in which Asian and Pacific Americans have enhanced our Nation and strengthened our communities.

North America was visited regularly by Asian and Pacific traders as early as the 16th century, and by the late 1800s, this continent was receiving large numbers of immigrants from China, Japan, Korea, the Philippines, and the Indian subcontinent. These settlers worked hard, turning wilderness into bountiful farmland in Hawaii, opening new industries in the West, and helping to build the first transcontinental railroad.

Along with a vast array of skills, Americans of Asian and Pacific Island ancestry brought their remarkable traditions of hard work and respect for family and education to their new country. Their belief in the American Dream of equality and opportunity enabled them to face the challenges of adversity and discrimination and achieve a record of distinguished service in all fields, from academia to government, from business to the military, and medicine to the arts. These people and their children managed to preserve the rich legacy of their homelands while also embracing the best values and traditions that define our Nation.

In recent years, newly arrived groups of Asian and Pacific peoples have continued to enrich our proud tradition of cultural diversity and endow our Nation with energy and vision. Today, as we prepare to enter the 21st century, we must continually strive to fulfill the ideals that originally attracted so many immigrants to our shores.

To honor the accomplishments of Asian and Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1997 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–12144
Filed 5–6–97; 10:27 am]
Billing code 3195–01–P

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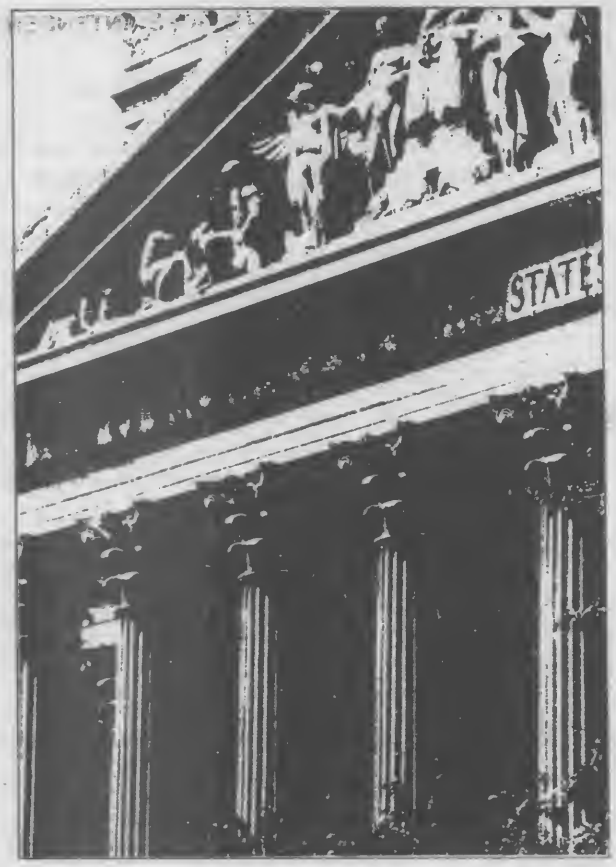

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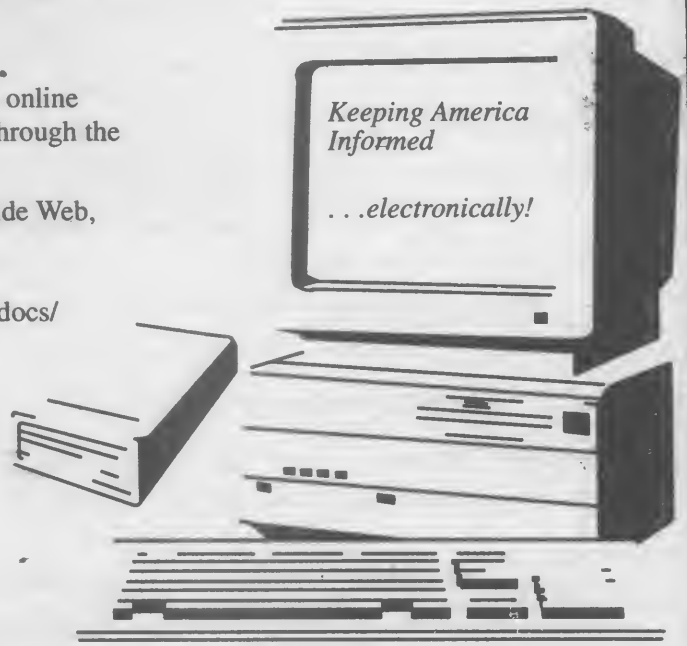

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