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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV97–922–2 IFR]

Reduced Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rates established under Marketing Order Nos. 922, 923, and 924 for the 1997–98, and subsequent fiscal periods. The Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Committee (Committees) are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The 1997–98 fiscal periods for these marketing orders cover the period April 1 through March 31. The assessment rates will continue in effect indefinitely until amended, suspended, or terminated.

DATES: Effective on August 5, 1997. Comments received by September 3, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements and Order No. 922 (7 CFR 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rates established for the Committees for the 1997–98 and subsequent fiscal periods from $3.00 to $2.00 per ton for Washington apricots, from $1.00 to $0.75 per ton for Washington sweet cherries, and from $1.00 to $0.75 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committees recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period

indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Washington Apricot Marketing Committee met on May 13, 1997, and unanimously recommended 1997–98 expenditures of $9,917 and an assessment rate of $2.00 per ton of apricots. In comparison, last year's budgeted expenditures were $9,385. The assessment rate of $2.00 is $1.00 less than the rate currently in effect. At the current rate of $3.00 per ton and an estimated 1997 fresh apricot production of 5,300 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed assessment rates of $1.00 and $1.50, but decided that an assessment rate of less than $2.00 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $2.00 per ton rate of assessment to the Committee's 5,300 ton shipment estimate should provide $10,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept withint he maximum permitted by the order.

The Washington Cherry Marketing Committee met on May 12, 1997, and unanimously recommended 1997–98 expenditures of $57,545 and an assessment rate of $0.75 per ton of cherries. In comparison, Last year's budgeted expenditures were $56,665. The assessment rate of $0.75 is $0.25 less than the rate currently in effect. At the current rate of $1.00 perton and an estimated 1997 sweet cherry production of 54,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of $0.50, but decided that an assessment rate of less than $0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. With cherry shipments for the year estimated at 54,000 tons, the assessment rate of $0.75 should provide $40,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Oregon-Washington Fresh Prune Marketing Committee met on May 28, 1997, and unanimously recommended 1997–98 expenditures of $7,233 and an assessment rate of $0.75 per ton of prunes. In comparison, last year's budgeted expenditures were $6,645. The assessment rate of $0.75 is $0.25 less than the rate currently in effect. At the current rate of $1.00 per ton and an estimated 1997 fresh prune production of 6,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of $0.50, but decided that an assessment rate of less than $0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. With fresh prune shipments for the year estimated at 6,000 tons, the $0.75 per ton assessment rate should provide $4,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenses recommended by the Committees for the 1997–98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertake as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 55 Washington apricot handlers, 55 Washington sweet cherry handlers, and 30 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule decreases the assessment rates established for the Committees and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committees unanimously recommended 1997–98 expenditures of $9,917 for apricots, $57,545 for cherries, and $7,233 for prunes and an assessment rate of $2.00 per ton of apricots, $0.75 per ton for cherries, and $0.75 per ton for prunes. The assessment rate of $2.00 for apricots is $1.00 less than the rate currently in effect. The assessment rates of $0.75 for cherries and prunes are

$0.25 less than the rates currently in effect. At current assessment rates, the Committees' reserves were projected to exceed the amount authorized in the orders of approximately one fiscal period's operational expenses. Therefore, the Committees voted to lower their respective assessment rates and use more of their reserves to cover expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves. Major expenses recommended by the Committees for the 1997–98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

Apricot shipments for 1997 are estimated at 5,300 tons, which should provide $10,600 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Sweet cherry shipments for 1997 are estimated at 54,000 tons, which should provide $40,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Fresh prune shipments for 1997 are estimated at 6,000 tons, which should provide $4,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 season will range between $600 and $1,400 per ton for Washington apricots, between $1,500 and $2,200 per ton for Washington sweet cherries, and between $200 and $500 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.14 and 0.33 percent for Washington apricots, between 0.03 and 0.05 percent for Washington sweet cherries, and between 0.15 and 0.38 percent for Washington-Oregon fresh prunes.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 12, 13, and 28 meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant material presented, including the information and recommendations submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rates for Washington apricots and cherries, and Washington-Oregon fresh prunes; (2) the 1997–98 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continue to read as follows:

Authority: 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. Section 922.235 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "$3.00" and adding in its place "$2.00."

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. Section 923.236 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "$1.00" and adding in its place "$0.75."

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

4. Section 924.236 is amended by removing "April 1, 1996," and adding in its place "April 1, 1997," and by removing "$1.00" and adding in its place "$0.75."

Dated: July 29, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–20459 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV97–993–1 IFR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the assessment rate for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1997–98 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes produced in California. Authorization to assess prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 crop year covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 1, 1997. Comments received by September 3, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, or Diane Purvis, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 1997–98 and subsequent crop years from $1.50 to $1.60 per salable ton of dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information available to the Secretary.

The Committee met on June 24, 1997, and unanimously recommended 1997–98 expenditures of $331,960 and an assessment rate of $1.60 per salable ton of dried prunes. In comparison, last year's budgeted expenditures were $283,500. The assessment rate of $1.60 is $0.10 higher than the rate currently in effect. The higher assessment rate is needed to cover increases in costs for the Committee's acreage survey and staff salaries.

The major expenditures recommended by the Committee for the 1997–98 crop year include $176,300 for salaries, wages, and benefits, $30,000 for research and development, $23,000 for office rent, $21,000 for travel, $20,000 for acreage survey, $8,060 for the reserve for contingency, $5,000 for office supplies, $9,000 for rental of equipment, and $8,000 for data processing. Budgeted expenses for these items in 1996–97 were $142,120, $30,000, $22,000, $20,000, $11,000, $8,430, $6,500, $3,800, and $6,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by its estimate of assessable California dried prunes for 1997–98. Assessable tonnage for the year is estimated at 207,475 salable tons which should provide $331,960 in assessment income. Income derived from handler assessments and interest income will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 1,400 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California dried prune producers and handlers may be classified as small entities.

Last year, as a percentage, about 29 percent of the handlers shipped over $5,000,000 worth of dried prunes and 71 percent of the handlers shipped under $5,000,000 worth of prunes. In addition, based on acreage, production, producer prices provided by the Committee, and the total number of dried prune producers, the average annual producer revenue is approximately $136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent crop years from $1.50 to $1.60 per salable ton. The Committee unanimously recommended 1997–98 expenditures of $331,960 and an assessment rate of $1.60 per salable ton of California dried prunes. The assessment rate of $1.60 is $0.10 more than the rate currently in effect. The Committee estimated assessable dried prunes in 1997–98 at 207,475 salable tons. Thus, the current $1.50 rate of assessment would only provide $311,212 in revenue, which would not be adequate to meet the Committee's 1997–98 budgeted espenses. The $1.60 rate should provide $331,960 in assessment income and be adequate to meet this year's expenses.

The Committee's increase from $283,500 to $331,960 in budgeted expenses for 1997–98 results primarily from increases in the following line item categories—total personnel (salaries, wages, and benefits), rental of equipment, data processing, and acreage survey. Expenses for these items for 1997–98, with last year's budgeted expenses in parenthesis, are: Total personnel—$176,300 ($142,120); rental of equipment—$9,000 ($3,800); data processing—$8,000 ($6,500); and acreage survey—$20,000 ($11,000). The increase is needed to provide wage and benefit increases for the staff. The increase in acreage survey is necessary to allow the Committee to conduct a more comprehensive dried prune acreage survey than conducted last year. The Committee considered the alternative of conducting a smaller scale survey at less cost, but decided that a survey of all California's producing counties was needed to help the industry make production and marketing plans. In making its budget recommendation, the Committee felt that all of the expense levels were appropriate and reasonable.

Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

California dried prune price information is not yet available for the 1997–98 crop year. Producer prices averaged $940 per ton in the previous crop year. The proposed $1.60 per ton assessment rate for the 1997–98 crop year is insignificant when compared to the average prices received the previous year and what is expected for the 1997–98 crop year.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 24, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997–98 crop year begins on August 1, 1997, and the marketing order requires that the rate of assessment for each crop year apply to

all assessable dried prunes handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Dried prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 993.347 [Amended]

2. Section 993.347 is amended by removing "August 1, 1996," and adding in its place "August 1, 1997,", and by removing "$1.50" and adding in its place "$1.60."

Dated: July 29, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–20457 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA–97–06]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document continues the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, requested continuation of the current suspension with a change to the producer diversion provision. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: August 1, 1997, through July 31, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address Clifford—M—Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26255).

Notice of Revised Proposed Suspension: Issued June 23, 1997; published June 27, 1997 (62 FR 34676).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 1,805 producers was pooled on the Texas Federal milk order. Of these producers, 1,350 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 24 handlers operating pool plants under the Texas order. Five of these handlers would be considered small businesses.

This rule continues the suspension of segments of the pool plant and producer milk definitions under the Texas order. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. Additionally, this rule will not increase the regulatory burden on handlers since the suspension has been in effect during the prior two-year period. The suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 7, 1997 (62 FR 26255), concerning a proposed suspension of certain provisions of the order. A revised proposed suspension was issued on June 23, 1997, and published in the **Federal Register** on June 27, 1997 (62 FR 34676). Interested persons were

afforded opportunity to file written data, views and arguments thereon.

Two comments in opposition to the revised proposed suspension and in support of the continuance of the existing suspension, one comment in opposition to the proposed suspension, and one comment in support of the revised proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1, 1997, through July 31, 1999, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13, paragraph (e)(2).

5. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;'.

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk provisions under the Texas order. This suspension will be in effect from August 1, 1997, through July 31, 1999. The current suspension will expire on July 31, 1997. This rule continues the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

A comment received from Associated Milk Producers Inc. (AMPI) to the May 7, 1997, proposed suspension supports the continuation of the suspension with a change to the producer milk diversion provision. AMPI, a cooperative association that represents a substantial number of dairy farmers who supply the Texas market, states that the change to the current suspension is necessary to achieve orderly marketing conditions within the Texas marketing area. The suspension currently in effect eliminates any diversion limit on the Texas market. However, according to the cooperative, by modifying the existing suspension as noticed in the revised proposed suspension, cooperative diversions would be limited to an amount equal to deliveries made to pool plants by these associations. The cooperative argues that this assures a more distinct association with the Class I market than the current suspension and limits "pool riding." Furthermore, AMPI states that as the New Mexico/West Texas and Texas markets coalesce, inter-market movements create the need for pooling requirements that are unrestrictive. However, these requirements must also allow reserve locations to serve their function in the marketplace and also preserve the integrity of the market.

Comments opposing the modification of the current suspension and in support of the existing suspension were submitted by Premier Milk, Inc., and Lone Star Milk Producers, L.C., two small cooperative associations representing producers who pool their milk on the Texas order. The cooperatives state that AMPI's revised proposal increases the difficulty of marketing milk on the Texas order because the proposed diversion limitation would reduce Premier's and Lone Star's opportunities to divert milk. The two cooperatives contend that presently in the Texas order a very limited amount of milk can be sold to pool plants by small cooperatives because the larger cooperatives either own or have full supply contracts with almost all of the pool plants in the Texas order.

A comment submitted by The Kroger Co. (Kroger), a handler operating a pool distributing plant regulated under the Texas order, opposes a continuance of the suspension of the pool plant and producer definitions which are currently in effect. Kroger states that the current suspension has eliminated the need for producers and pool supply plants to service the fluid milk market and continue to enjoy the benefits of association with the Texas order. Furthermore, the handler contends that current marketing conditions justify the denial of continuation of the suspension. Kroger argues that current supply conditions indicate that local milk supplies will be needed to meet the demand of fluid milk sales and states that the suspended provisions discourage the availability of local milk to meet the needs of fluid milk handlers. Therefore, in order to assure consumers an adequate supply of milk at a reasonable cost, according to the handler, the suspension should not be continued.

Continuation of the current suspension is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition, the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Marketing conditions have not significantly changed since 1995 when the current suspension was issued. There is no indication that adequate local fluid milk supplies will not be available to service the needs of handlers in the Texas marketing area. Although the Class I utilization of producer milk has increased to 51.73% for the July 1996 through June 1997 period as compared to 45.38% in the previous July through June period, this Class I utilization has not increased to the level where it is difficult to obtain an adequate supply of milk.

Currently the Federal milk marketing order program is undergoing an extensive review as mandated by the Federal Agriculture Improvement and Reform Act of 1996. All provisions of milk orders, including the producer and pool plant definitions, are being examined as part of Federal order reform. However, while this process is underway, marketing conditions in the Texas order warrant the continuance of the existing suspension to ensure the orderly marketing of milk.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning August 1, 1997, through July 31, 1999.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments supporting the current suspension and opposing the revised proposed suspension, one comment supporting the revised proposed suspension, and one comment opposing the proposed suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1126 is amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.

5. Section 1126.13(e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" is suspended.

Dated: July 29, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–20458 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–02–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 97–44]

RIN 3069–AA28

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP or Program). Among the significant changes made by the final rule are: transfer of approval authority for AHP applications from the Finance Board to the Federal Home Loan Banks (Banks); modification of the competitive scoring process under which AHP subsidies are allocated among housing projects; establishment of specific standards and retention periods for monitoring of AHP-assisted housing projects; and clarification and expansion of the types of remedies available in the event of noncompliance with AHP requirements.

The final rule is in furtherance of the Finance Board's continuing effort to devolve management and governance authority to the Banks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: The final rule is effective on January 1, 1998. Compliance with § 960.3(b) shall begin on September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, (202) 408–2848, or Diane E. Dorius, Associate Director, Program Development Division, (202) 408–2576, Office of Policy; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Brandon B. Straus, Senior Attorney-Advisor, (202) 408–2589, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the Program. *See id.* The Finance Board's existing regulation governing the operation of the Program is set forth in part 960 of the Finance Board's regulations. *See* 12 CFR part 960. The Program has been operating successfully for approximately seven years.

As a result of the Finance Board's and the Banks' experience in administering the Program, on January 10, 1994, the Finance Board issued a notice of proposed rulemaking, which was published in the **Federal Register**, that proposed changes to improve operation of the Program. *See* 59 FR 1323 (Jan. 10, 1994). The Finance Board received over 100 comment letters. During the following 18-month period, the Finance Board was without a quorum and was unable to take action on the proposed rule.

On September 25, 1995, the Finance Board published a final rule amending the AHP regulation to permit the Banks to set aside of portion of their required annual AHP contributions to fund homeownership set-aside programs to provide downpayment and closing cost assistance to low-and moderate-income homebuyers. *See* 60 FR 49327 (Sept. 25, 1995). On November 1, 1995, the Finance Board published for comment a proposal to amend the existing AHP regulation to authorize the Banks, in their discretion, to establish limits on the maximum amount of AHP subsidy that may be requested per member, per project application, or per project unit, for a given funding period. *See* 60 FR 55487 (Nov. 1, 1995) (Subsidy Limits Proposal). The Finance Board received

25 comment letters on the Subsidy Limits Proposal.

Given the passage of time since the 1994 and 1995 notices of proposed rulemaking, and the additional experience of the Finance Board and the Banks in overseeing and administering the Program, the Finance Board issued a new comprehensive proposal to revise the Program, which was published in the **Federal Register** on November 8, 1996, with a 90-day period for public comment. *See* 61 FR 57799 (Nov. 8, 1996). The Finance Board received over 270 comments on the proposed rule. Commenters included: all of the Banks and their Advisory Councils; Bank members; not-for-profit organizations; trade associations; a member of Congress; a federal agency; state and local government agencies; and others.

II. Analysis of the Final Rule

A. In General

The final rule makes changes to a number of the aspects of the Program that were highlighted in the notice of proposed rulemaking, including: (1) Scoring and approval of AHP applications for funding; (2) retention of AHP-assisted housing; (3) monitoring of AHP-assisted housing; (4) and remedies for noncompliance with AHP requirements. These changes are intended to provide clearer standards for operation of the Program and reduce regulatory burden, while continuing to identify and prevent misuse of AHP subsidies. Many of the changes codify successful practices developed by the Banks in implementing the Program. The amendments also should make the Program more responsive to low- and moderate-income housing needs in each of the twelve Bank Districts (Districts), increase efficiency in the administration of the Program, and enhance coordination of the Program with other housing programs whose funds are used in conjunction with AHP subsidies.

The final rule also reorganizes and streamlines the text of the regulation. The structure of the final rule is significantly revised from that of the proposed rule in order to, among other things: (1) separate Program standards from procedures; (2) integrate the provisions governing the Banks' homeownership set-aside programs with corresponding provisions governing the Banks' competitive application programs; (3) clarify the roles of the Banks, members, and other parties involved in the Program; and (4) identify the kinds of agreements that must be in place in order to ensure compliance with Program requirements.

The Finance Board is making these changes in the larger context of devolving to the Banks the authority to make final funding decisions for AHP projects. Decentralization of funding decisions under the Program is consistent with the Finance Board's ongoing efforts to transfer to the Banks those functions performed by the Finance Board that are related to Bank management and governance. Further, the Finance Board believes that, in light of the Banks' seven years of experience evaluating and processing AHP applications, the Banks are prepared to take on this new authority. A large majority of comments on the proposed rule supported the transfer of approval authority for AHP applications from the Finance Board to the Banks. The Finance Board will continue to exercise its supervisory oversight role through examinations of each Bank's Program.

B. Effective Dates and Existing AHP-Assisted Projects

1. Dates

In order to provide the Banks sufficient time to prepare to administer the Program under the revised AHP regulation, the provisions of the final rule will become effective on January 1, 1998. However, compliance with § 960.3(b) shall begin on September 3, 1997. As further discussed below, § 960.3(b) requires each Bank to adopt an AHP implementation plan setting forth key policies and procedures governing the Bank's Program.

2. Application of the Final Rule to Existing AHP-Assisted Projects

Section 960.16 of the final rule makes clear that the provisions of the final rule apply to all existing AHP-assisted projects. Existing agreements between Banks, members, sponsors, or owners regarding such parties' AHP obligations may have language that automatically incorporates any changes to the AHP regulation that may be adopted from time to time by the Finance Board. Section 960.16 of the final rule makes clear that where existing agreements do not provide for automatic conformity with AHP regulatory changes, the requirements of section 10(j) of the Act and the provisions of the AHP regulation, as amended, are incorporated into such agreements by operation of law.

The final rule may require Banks, members, sponsors, and owners to change their behavior prospectively to meet new regulatory requirements. However, the changes made by the final rule are not intended to affect the legality of actions taken prior to the effective date of the final rule.

C. Definitions—§ 960.1

Changes to individual definitions in the final rule generally are discussed in later sections of this **SUPPLEMENTARY INFORMATION** section in the context of specific regulatory requirements, with the exception of the following definitions discussed here.

1. "Subsidized advance" and "Subsidy"

The final rule carries forward the provision of the proposed rule defining "subsidized advance" as "an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy." The proposed rule defined "subsidy," for purposes of determining the amount of the interest rate subsidy incorporated in a subsidized advance, as "the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise." The definition of "subsidy" in the final rule makes clear that the amount of the interest rate subsidy in a subsidized advance is determined as of the earlier of the two dates mentioned above.

The notice of proposed rulemaking requested comments on whether the interest rate subsidy incorporated in a subsidized advance should be defined by reference to a Bank's market advance rate, rather than the Bank's cost of funds. This would allow a Bank to use AHP subsidies to pay its regular advance mark-up where AHP subsidy is delivered to a project through a subsidized advance, which may eliminate a perceived disincentive to the Banks to make subsidized advances, versus direct subsidies. A number of commenters stated that the form in which AHP subsidies are delivered to projects, *i.e.*, subsidized advances versus direct subsidies, is determined by the financing structures used by proposed projects, not by the preferences of Banks in funding such projects. Consequently, allowing Banks to use AHP subsidies to pay their regular advance mark-up would not affect the level of subsidized advances made by Banks and would use more AHP subsidies to produce the same amount of affordable housing. The Finance Board finds merit in these arguments. Therefore, the final rule carries forward the reference to a Bank's

"cost of funds" in the definition of "subsidy."

2. Definitions of "Median Income for the Area," "Low-and Moderate-Income Household," and "Very Low-Income Household"

a. *Median Income Standards and Family Size-Adjustments.*

(i) Statutory Standards

Under section 10(j)(2)(A) of the Act, members are to use AHP subsidies to finance owner-occupied housing for "families with incomes at or below 80 percent of the median income for the area." *See* 12 U.S.C. 1430(j)(2)(A). Section 10(j)(13)(A) of the Act contains a corresponding definition of "low-or moderate-income household" as a household that has an income of "80 percent or less of the area median." *See id.* § 1430(j)(13)(A).

Under section 10(j)(2)(B) of the Act, members are to use AHP subsidies generally to finance rental housing for "very low-income households." *See id.* § 1430(j)(2)(B). Section 10(j)(13)(B) of the Act defines the term "very low-income household" as a household that has an income of "50 percent or less of the area median." *See id.* § 1430(j)(13)(B).

The Act does not define "median income for the area" or "area median." To date, the Finance Board has interpreted these terms to refer to the measure of median income for an area as determined and published by the Secretary of the Department of Housing and Urban Development (HUD) for approximately 2,700 metropolitan statistical areas (MSAs), counties, and nonmetropolitan statistical areas, including adjustments for various local conditions as well as for family size. *See* 42 U.S.C. 1437a(b)(2); 12 CFR 960.1(h). In practice, this required the use of income limits published by HUD corresponding to 80 percent and 50 percent, respectively, of the median income for a particular area, adjusted for family size.

(ii) Proposed Regulatory Amendments.

On November 5, 1993, the Finance Board published for comment a proposal to amend the AHP regulation to redefine the AHP income limits without certain adjustments incorporated in the HUD income limits. *See* 58 FR 58988 (Nov. 5, 1993). This proposal also was part of the Finance Board's January 10, 1994 proposal. *See* 59 FR 1323 (Jan. 10, 1994).

The November 8, 1996 proposed rule continued to require the use of HUD income limits, including adjustments for family size, in determining household eligibility under the Program. The notice of proposed rulemaking requested comments on the definitions in the proposed rule and, alternatively, on allowing: (1) Median income to be established using any reliable source for current area information and to be determined for counties and other applicable state and local subdivisions as well as MSAs; (2) any adjustment for family size to be made in conformance with the requirements of the lead or controlling funding source or program for the project; and (3) the use of whatever median income standard and adjustment is being used by the sponsoring or funding entity for the project, provided that the standard is from a legitimate state or federal source that regularly provides such information on income.

(iii) Final Regulatory Standards

While a number of commenters supported using HUD income limits on the ground that they are readily understood and available, there also was significant support for: (1) the use of median income standards, including any family-size adjustments, established using any reliable source for current area income data determined for counties and other applicable state and local subdivisions as well as MSAs; or (2) the use of whatever median income standard and adjustment is being used by the sponsoring or funding entity for the project, provided that the standard is from a legitimate state or federal source that regularly provides such information on income.

While the Finance Board favors some measure of flexibility on the issue of income limits for households participating in AHP-assisted projects, a prerequisite for any income eligibility standard is that it is based on data that are accepted as accurate and reliable and are readily available. The Finance Board wishes to avoid adopting an income eligibility standard that increases the risk of after-the-fact discrepancies between a particular income eligibility standard and the actual incomes of households benefiting from AHP subsidies, which ultimately may lead to repayment of the subsidies.

In light of the support among commenters for the use of measures of median income and family-size adjustments other than those used by HUD in its housing programs, the final rule adds a definition of "median income for the area," and amends the definitions of "low-or moderate-income household" and "very low-income household" to permit the use of additional median income standards and their corresponding adjustments for family size.

In the case of owner-occupied projects, "median income for the area" means: (1) The median income for the area, as published annually by HUD; (2) the applicable median family income, as determined under the mortgage revenue bond program set forth in 26 U.S.C. 143(f) and published by a State agency or instrumentality; (3) the median income for the area, as published by the United States Department of Agriculture (USDA); or (4) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP.

The final rule expressly includes reference to the median income published by the USDA in order to make clear that the Finance Board supports the use of the AHP by members in rural areas in order to meet homeownership needs in those areas.

Under the Internal Revenue Code, household eligibility for mortgage financing provided by qualifying mortgage revenue bonds is based on the "applicable median family income," which is the greater of: (1) The area median gross income for the area in which a residence is located; or (2) the statewide median gross income for the State in which the residence is located. *See* 26 U.S.C. 143(f)(4). The "applicable median family income" is based on income data published by HUD. *See* Rev. Proc. 97–26, 1997–17 I.R.B 17.

Under the mortgage revenue bond program, the applicable median family income may be adjusted depending on whether the residence being financed is in a targeted versus a non-targeted area and whether the residence is in a high housing cost area. *See* 26 U.S.C. 143(f)(3), (5). Adjustments also are made for family size. *See id.* section 143(f)(6)(A). It should be noted that for purposes of the AHP, the applicable median family income may be adjusted for family size, but shall not be adjusted based on the location of a residence in a targeted area or a high housing cost area, *see id.* section 143(f)(3), (5), because in targeted areas and high housing cost areas, the mortgage revenue bond program does not use the "applicable median family income" as the basis for household income eligibility. In targeted areas, "applicable median family income" is adjusted by a factor of 120 percent based solely on the location of the residence in a targeted area. *See id.* section 143(f)(3). Consequently, the baseline measure of area median income in targeted areas is 120 percent of the "applicable median

family income," rather than simply the "applicable median family income." As discussed above, the Act requires that the AHP income limit be based on 80 percent of some measure of the "median income for the area." Since the mortgage revenue bond program does not use the "applicable median family income" as a measure of median income for targeted areas, use of that program's income limits for targeted areas would not be permissible under the Act.

Similarly, in cases where the income limit under the mortgage revenue bond program is adjusted above the "applicable median family income" for high housing cost areas, *see id.* section 143(f)(5), use of the adjusted income limit would not be permissible under the Act. In sum, the Finance Board believes that using the "applicable median family income," as determined under the mortgage revenue bond program for residences in non-targeted areas, is consistent with the requirements of the Act and is a viable alternative to the use of income limits used under HUD's housing programs because it is based on data that are accepted as accurate and reliable and are readily available from state agencies and instrumentalities that publish income limits for purposes of their mortgage revenue bond programs. Accordingly, as applied to the AHP, in the case of a one- or two-person household, the income limit would be 80 percent of the "applicable median family income," and for households with three or more members, the income limit would be 80 percent of 115 percent of the "applicable median family income." *See id.* section 143(f)(1), (6)(A).

Under the final rule, a Bank may request approval of the Board of Directors of the Finance Board to use a measure of median income for AHP-assisted owner-occupied projects other than those used by HUD, the USDA, or a state mortgage revenue bond program. Such requests will receive prompt consideration by the Board of Directors. However, prior to requesting approval of an alternative median income standard, a Bank must amend its AHP implementation plan to permit the use of that standard, conditioned on Board of Directors approval. This is intended to ensure that a Bank receives input from its Advisory Council prior to proposing a new median income standard for use under the AHP.

For purposes of rental projects, the final rule defines "median income for the area" as: (1) The median income for the area, as published annually by HUD; or (2) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP.

While the Finance Board wishes to provide the opportunity for the use of measures of median income in addition to those used by HUD for rental projects, the Finance Board wishes to address such alternatives on a case-by-case basis. A large majority of rental projects receiving AHP subsidies are otherwise required to use the income limits published by HUD for its housing programs because these projects have received funds from HUD or have been allocated federal Low-Income Housing Tax Credits. Consequently, there appears to be less need for flexibility at this time with regard to income limits for rental projects. Nonetheless, in view of the potential for an increasing flow of funds to rental housing from bonds and other state and local programs, the final rule permits the Banks to seek approval of alternative measures of median income for AHP-assisted rental projects under the same procedures that apply for owner-occupied projects, discussed above.

In cases where a Bank chooses to permit the use of more that one median income standard (and its corresponding family-size adjustments), such standards must be available to all proposed projects in the Bank's District. Accordingly, the definition of "median income for the area" expressly states that a Bank may select a median income standard or standards from which all projects may choose for purposes of the AHP. Furthermore, under section 960.3(b)(1)(i) of the final rule, a Bank must set forth in its AHP implementation plan the applicable median income standard or standards, adopted by the Bank consistent with the definition of "median income for the area." Two members of the Board of Directors of the Finance Board have requested that agency staff gather data regarding the impact as of the end of 1998 of the increased flexibility in the area median income standards.

b. *Timing of Household Income Qualification.*

The final rule incorporates in the definitions of "very low-income household" and "low-or moderate-income household" provisions governing the time at which a household's income should be examined to determine whether it meets the income eligibility requirements for AHP-assisted housing.

The final rule provides that in the case of owner-occupied projects, this determination is to be made at the time the household is qualified by the sponsor (or member, in the case of a homeownership set-aside program) for participation in the project. This is a change from the proposed rule, which required that the determination be made no earlier than the date on which the application for subsidy funding the project is submitted to the Bank for approval. Several commenters requested this change in order to allow project sponsors more flexibility in qualifying households. Commenters identified a number of programs, such as sweat-equity programs, that qualify households prior to the deadline established by the proposed rule. Under the final rule, households may be qualified at any time, but in all cases, sponsors must have adequate documentation to verify income eligibility.

The final rule also revised the provisions of the proposed rule governing the timing of household income qualification for rental projects to take into account situations where there are current occupants in units receiving AHP assistance. The final rule provides that where rental projects involve the purchase or rehabilitation of units with current occupants, the income qualification determination is to be made at the time the purchase or rehabilitation is completed.

3. Definition of "Affordable"

The final rule provides that "affordable" means that the rent charged to a household for a unit that is committed to be affordable in an AHP application does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). This language clarifies that only those units that are committed to be affordable in an AHP application are subject to the 30 percent-of-income limitation. The revised definition also replaces the reference in the proposed rule to a household's "monthly housing costs" with a reference to the "rent" charged for the unit. This change was made to exclude utility costs from the affordability calculation where these costs are not part of the rent for a unit.

D. Operation of Program and Adoption of AHP Implementation Plan—§ 960.3

1. Program Operation

The proposed rule provided that each Bank's Program shall be governed solely

by the requirements set forth in 12 U.S.C. 1430(j) and part 960, and prohibited a Bank from adopting any additional substantive AHP requirements, except as expressly provided in part 960. This was intended to make clear that the AHP regulation is to "occupy the field" with regard to substantive requirements governing the Program. The final rule omits this general prohibition and identifies specific areas where the Banks are prohibited from imposing additional substantive Program requirements, namely optional and mandatory eligibility requirements and scoring criteria.

A significant number of commenters objected to the proposed language on the ground that it would reduce the Banks' ability to adopt Program requirements in addition to those in the AHP regulation in order to address what the Banks have characterized as special circumstances in their Districts. While the Finance Board agrees that the Banks should have discretion in making decisions regarding Program implementation in order to meet regional needs, the Finance Board has a legal mandate to exercise independent judgment, in light of the public interest, as to the purpose of the AHP and the standards needed to effect that purpose. The Act makes clear that the authority to adopt regulations governing the AHP rests with the Finance Board. *See* 12 U.S.C. 1430(j) (1) and (9). In order to address concerns about flexibility, the Finance Board has attempted to provide the Banks discretion in those areas of the Program that, over the past seven years, have shown a need for flexibility.

2. Allocation of AHP Contributions

Section 960.3(a) of the final rule consolidates provisions of the proposed rule related to the allocation of a Bank's required annual AHP contribution to its competitive application program and homeownership set-aside program or programs. Section 960.3(a)(1) of the final rule provides that a Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside program or programs. This is a change from the proposed rule, which limited homeownership program set-aside amounts to the greater of $1 million or 10 percent of a Bank's required annual AHP contribution. A number of commenters supported an increase in the maximum set-aside amount in light of the high demand for such funds. Moreover, the Finance Board has approved funding as high as $1.5 million for one Bank's set-aside program. The final rule continues to permit a Bank to allocate funds from the subsequent year in instances where demand for funds in the current year exceeds that year's set-aside amount.

Section 960.3(a)(2) of the final rule provides that the portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through the Bank's competitive application program.

3. AHP Implementation Plans

The proposed rule required each Bank's board of directors to adopt an AHP implementation plan and any amendments to the plan by December 1 of each year, after providing its Advisory Council a reasonable period of time to review the plan and any amendments and provide its recommendations. Section 960.3(b) of the final rule carries forward this requirement generally, but omits a specific deadline for adoption of the plan. Once a Bank's board of directors has adopted its plan, or any amendments, the Bank must submit the plan or amendments to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective. A Bank's implementation plan is the vehicle through which the Bank determines the standards for its Program, consistent with the requirements of the final rule. Section 960.3(b)(1) of the final rule identifies Bank procedures and other information that must be included in a Bank's implementation plan. Compliance by the Bank with its implementation plan will provide the basis for Finance Board examination of the Bank's implementation of its Program.

4. Conflicts of Interest Policies

Section 960.3(c) of the final rule consolidates provisions of the proposed rule that required the boards of directors of the Banks to adopt conflicts of interest policies governing Bank directors and employees and Advisory Council members. The proposed rule required each Bank to have a policy providing that a Bank director, officer, or employee or an Advisory Council member who has a personal interest in, or who is a director, officer or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

Section 960.3(c) of the final rule contains two substantive changes to the proposed language. First, the reference to a "personal interest" of a party in a project is replaced with a reference to a "financial interest" of a party or that party's "family member." A "family member" is defined in § 960.1 as any individual related to a person by blood, marriage or adoption. This change is intended to respond to comments requesting clarification of the scope of the intended prohibition in this provision.

Second, the final rule no longer prohibits an interested Advisory Council member from being involved in decisions of the Bank regarding the evaluation, funding, monitoring or any remedial process for a project that is the subject of a pending or approved AHP application. As some commenters pointed out, many Advisory Council members, who by law are drawn from community and not-for-profit organizations, may in many cases be integrally involved in projects that are the subject of pending or approved AHP applications. Consequently, Advisory Council members often must work with the Banks in resolving issues related to the evaluation, funding, monitoring, and compliance of such projects. This is reflected in the revised language of the final rule.

E. Advisory Councils—§ 960.4

Section 960.4 of the final rule carries forward the provisions of the proposed rule governing Advisory Councils, with the following changes. First, § 960.4(d) of the final rule provides that Advisory Council members may be appointed to serve for up to three consecutive three-year terms. The proposed rule permitted a maximum of two consecutive three-year terms. Some commenters suggested that there be no term limit for Advisory Council members in order to allow the Banks to benefit from the experience and familiarity with the Program that Advisory Council members develop the longer they serve on an Advisory Council. The Finance Board believes permitting Advisory Council members to serve for up to nine consecutive years will promote this goal.

Second, the final rule omits the proposed requirement that a Bank allow Advisory Council members to examine AHP applications under the Bank's competitive application program from prior funding periods. Some commenters opposed this provision on the ground that it would provide Advisory Council members who, in

many cases, are associated with organizations that have projects in a Bank's competitive application program, access to information that may give them an unfair competitive advantage. Accordingly, this provision is deleted, but § 960.4(f)(2) of the final rule retains the proposed requirement that a Bank comply with requests from its Advisory Council for summary information regarding AHP applications from prior funding periods. Access to this information will aid Advisory Council members in evaluating how a Bank's scoring guidelines affect the allocation of AHP subsidies among different types of housing projects.

The notice of proposed rulemaking requested comments on the role, selection, and compensation of Advisory Council members. Commenters supported the Advisory Councils' expanded role in providing recommendations on the Banks' AHP implementation plans. Commenters also generally supported expanding the role of Advisory Councils to include providing advice on ways in which the Banks can better carry out their housing finance and community investment mission. Sections 960.3(b)(3) and 960.4(f)(1) of the final rule, respectively, retain these provisions of the proposed rule.

Section 960.4(b) of the final rule carries forward the proposed provision requiring the Banks to appoint Advisory Council members giving consideration to the size of the Banks' District and the diversity of low- and moderate-income housing needs and activities within the District. While the Finance Board does not believe that there should be absolute limits on the membership of any one group on the Advisory Councils, the Finance Board wishes to ensure a diversity of viewpoints so that no one group consistently has a dominant voice on an Advisory Council. Accordingly, the proposed rule required the Banks to draw Advisory Council members from a diverse range of organizations, provided that representatives of no one group constitute an undue proportion of the membership of an Advisory Council. Commenters generally supported this provision. Therefore, § 960.4(c) of the final rule carries forward the proposed provision without change.

Section 960.4(g) of the final rule carries forward the proposed requirement, which also is a requirement of the existing regulation, that a Bank pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank. In addition, the final rule requires a Bank to pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings requested by the Finance Board. The Finance Board believes that meetings with Finance Board representatives provide an important forum for Advisory Council members to communicate their views to the agency. Consequently, where the Finance Board requests such meetings, it is appropriate for the Banks to reimburse the transportation and subsistence expenses of those Advisory Council members who attend.

Several commenters suggested that the Banks be required to pay fees to Advisory Council members for attending such meetings. While this is not required by the final rule, nothing precludes the Banks, in their discretion, from paying such fees.

F. Minimum Eligibility Standards for AHP Projects—§ 960.5

1. In General

As part of the reorganization of the structure of the proposed rule, those provisions of the proposed rule that constitute minimum eligibility standards for AHP projects have been consolidated into a single section in the final rule, as described below.

2. Homeownership Set-Aside Programs

Under the existing regulation, Banks must establish their homeownership set-aside programs in accordance with the specific requirements set forth therein, unless they obtain Finance Board approval to establish "nonconforming" programs. *See* 12 CFR 960.5(g). The proposed rule revised the existing regulation to allow the Banks more flexibility in establishing their homeownership set-aside programs, including the program eligibility requirements, without having to obtain prior Finance Board approval.

Section 960.5(a) of the final rule sets forth the minimum eligibility standards for a Bank's homeownership set-aside programs. The final rule carries forward the proposed eligibility standards with the following changes. First, under § 960.5(a)(3), the maximum amount of funds available per household is increased from $5,000 to $10,000. Several commenters suggested this change in order to serve lower income homebuyers in high cost areas.

Second, § 960.5(a)(4) of the final rule includes rehabilitation by current homeowners as an eligible use of homeownership set-aside funds. The language of the proposed rule limited the use of homeownership set-aside funds to home purchases. As indicated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board intended to allow homeownership set-aside funds to be used also for rehabilitation by current homeowners. *See* 61 FR 57799, 57813 (Nov. 8, 1996).

Third, the Finance Board received a number of comments suggesting that homeownership set-aside funds be permitted to be used for homebuyer counseling costs, which was prohibited by the proposed rule. Sections 960.5 (a)(4) and (a)(7) of the final rule permit homeownership set-aside funds to be used to pay for counseling costs where: (i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; (ii) the cost of the counseling has not been covered by another funding source, including the member; and (iii) the homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. The Finance Board believes that if homeownership set-aside funds are to be used for counseling costs, they should be used to expand the pool of resources available for counseling, rather than replace existing sources of funding. These provisions are intended to prevent homeownership set-aside funds from being used to pay for counseling that, in the absence of such funds, customarily would be financed by members participating in a homeownership set-aside program.

Fourth, § 960.5(a)(8) of the final rule requires homeownership set-aside funds to be drawn down and used by eligible households within a period of time specified by the Bank in its AHP implementation plan. This parallels a similar requirement for a Bank's competitive application program, as discussed further below, and is currently a requirement in several of the Banks' existing homeownership set-aside programs.

Fifth, the final rule omits the requirement that any program eligibility criteria adopted by a Bank be consistent with the National Homeownership Strategy coordinated by HUD. The minimum eligibility requirements set forth in the final rule ensure that homeownership set-aside funds are provided to households for uses that are consistent with the National Homeownership Strategy. Therefore, the explicit reference to the Strategy is omitted in the final rule.

3. Competitive Application Program

Section 960.5(b) of the final rule sets forth the minimum eligibility standards for a Bank's competitive application program. The final rule carries forward the provisions of the proposed rule, with the following changes regarding project feasibility and need for subsidy, and timing of subsidy use. As discussed below, the final rule also omits the maximum subsidy requirement in the proposed rule, which provided that no AHP-subsidized household in a project could pay less than 20 percent of its gross monthly income toward monthly housing costs (the 20 percent requirement).

a. *Project Feasibility and Need for Subsidy.*

Section 960.5(b)(2) of the final rule consolidates standards regarding project feasibility and need for subsidy that appeared in several different sections of the proposed rule. Many commenters objected to those provisions of the proposed rule requiring the Banks to adopt project cost guidelines and to evaluate the reasonableness of the interest rates and charges involved in financing from funding sources other than members. Commenters stated that such requirements are duplicative of efforts undertaken by members and other funding sources and are unnecessarily burdensome for the Banks.

The proposed rule was intended to codify the current practices of many of the Banks in evaluating project feasibility and need for subsidy. Due to the time constraints of the application process, members often do not provide the level of project review necessary to determine project feasibility and the need for AHP subsidy. Consequently, the Finance Board believes it is in the best interest of the Program for the Banks to have and carry out an independent duty to scrutinize each proposed project to determine whether the requested subsidy is necessary for the financial feasibility of the project, as currently structured. Section 960.3(b)(1)(iii) of the final rule requires the Banks to include in their AHP implementation plans feasibility guidelines for determining whether proposed projects comply with these standards.

The Finance Board is sensitive to the challenge of developing project feasibility guidelines during the transition to operation under the regulatory changes made by this final rule. The Finance Board intends to create a special process under which a Bank may, at its option, obtain prior review and approval by the Finance Board of its initial project feasibility guidelines in order to ensure that they are consistent with the requirements of the final rule.

With regard to a project's estimated sources of funds, § 960.5(b)(2)(i) of the final rule carries forward provisions of the proposed rule and makes clear that such sources must include estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity. This provision is intended to allow sponsors that build housing using donations of labor and material to account for such sources of funds in their development budgets. Sweat-equity is excluded from a project's funding sources in order to avoid requiring the purchaser of a home who provides labor in the construction of the home to pay for the value of his or her own labor.

The proposed rule provided that AHP subsidies may be used to pay only for the customary and standard costs typically incurred, at fair market prices, to purchase, construct, or rehabilitate AHP-eligible housing. At the time of disbursement, the Bank was required to obtain a current independent appraisal of property sold to a project where a member had a "direct or indirect interest" in the property or project. In response to requests from several commenters, the final rule clarifies the proposed language referring to a "direct or indirect interest" of a member in the property or project. Section 960.5(b)(2)(ii)(B) of the final rule provides that the purchase price of property or services sold to a project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed market value as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by the member, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.

Several commenters suggested that the value of property may be enhanced where the property is proposed to be used for affordable housing receiving subsidized financing. In addition, there may be other factors related to the proposed use of a property for affordable housing that affect the property's valuation. The Finance Board believes that it may be appropriate to take such factors into account in determining the market value of a property. As discussed above, the final rule provides for property to be valued either "as-is" or "as rehabilitated," whichever is appropriate under the circumstances. However, the Finance Board believes that any valuation judgments related to a property's use for affordable housing should be reflected in an appraisal of the property. Consequently, to the extent that a property's proposed use for affordable housing affects the property's value, this factor should be reflected in the appraisal of the property in order to be considered in determining the property's market value for purposes of the AHP.

b. *Timing of Subsidy Use.*

The proposed rule provided that a project must be likely to be completed within a reasonable period of time. Section 960.5(b)(3) of the final rule provides that the AHP subsidy must be likely to be drawn down by a project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy financing the project. This reflects the requirement of the existing regulation and current practice.

c. *Prepayment Fees.*

There may be situations where, due to declining interest rates, it would be advantageous to a project to prepay its loan from a member and refinance the project. However, prepayment of the member's loan may trigger prepayment of the Bank's subsidized advance by the member, a prepayment fee for the member, and, thus, a prepayment fee for the project. It has been suggested that the project be permitted to allocate the remaining AHP subsidy incorporated in the advance to pay for the member's prepayment fee. This, in turn, would permit the member to forego charging the project a prepayment fee, making refinancing less costly.

The proposed rule prohibited the use of AHP subsidies for such prepayment fees on the ground that funding such fees is an unproductive use of AHP subsidies and does not meet the statutory requirement that AHP subsidies be used to finance housing. Clearly, however, where a project agrees to continue to comply with the terms of the application for the AHP subsidy after using the subsidy to pay for a prepayment fee, the purpose of the Program is met and the project is able to obtain a stronger financial position. Consequently, § 960.5(b)(4)(i) of the final rule permits the use of AHP subsidies to pay for prepayment fees

imposed by a Bank on a member for a prepayment of a subsidized advance, if, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of the AHP regulation for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects.

d. *Counseling Costs.*

The notice of proposed rulemaking requested comments on whether AHP subsidies should be permitted to be used to pay for counseling costs generally, and whether AHP subsidies should be used to pay only for counseling for homebuyers, homeowners, or tenants of AHP-assisted units. Section 960.5(b)(5) of the final rule, which carries forward the proposed provision, permits AHP subsidies to be used to pay for costs incurred in connection with counseling of homebuyers as long as: (1) The counseling is provided to a household who actually purchases an AHP-assisted unit; and (2) the cost of the counseling has not been covered by another funding source, including the member. While many commenters supported the proposed provision, there was no consensus among commenters on this issue. The Finance Board believes that if AHP subsidies are to be used for counseling costs, they should be used to expand the pool of resources available for counseling, rather than replace existing sources of funding. The Finance Board wishes to prevent AHP subsidies from being used to pay for counseling that, in the absence of the AHP subsidy, would customarily be financed by another source of funding for a project.

e. *Refinancing.*

Section 960.5(b)(6) of the final rule carries forward the proposed requirement that if a project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of AHP-eligible housing. Several commenters suggested that the final rule should permit the use of AHP subsidies to refinance existing projects in cases where no equity is taken out of the project and the refinancing results in a lower debt service cost for the project. Such use of AHP subsidies would be contrary to the Act, because there would be no resulting purchase, construction, or rehabilitation of AHP-eligible housing. See 12 U.S.C. 1430(j)(2).

f. *Project Sponsor Qualifications.*

Section 960.5(b)(8) of the final rule provides that a project's sponsor must be qualified and able to perform its responsibilities as committed to in the AHP application. Section 960.1 of the final rule carries forward the definition of "sponsor" in the proposed rule and, in response to comments, clarifies that in the case of rental projects, "sponsor" includes an organization whose ownership of a project is in the form of a partnership interest.

g. *Use of AHP Subsidies for Loan Guarantees.*

Several commenters suggested that the final rule permit the use of AHP subsidies for loan guarantees or other financial mechanisms to make affordable housing feasible. Although the Finance Board did not request comments on this issue and has not authorized the use of AHP subsidies for loan guarantees in the final rule, the Finance Board does find these comments of interest and will review how such guarantees might work under the AHP.

h. *Pre-Development Expenses.*

The final rule omits the language in the proposed rule expressly prohibiting the use of AHP subsidies for pre-development expenses. The proposed rule prohibited the use of AHP subsidies for pre-development expenses not yet incurred by a proposed project as of the date the AHP application is submitted to the Bank. This language was intended to make clear that a Bank could not provide AHP subsidies for the sole purpose of determining the feasibility of housing.

The final rule omits this language because the requirement in § 960.5(b)(2) that projects be feasible in order to receive AHP subsidy effectively incorporates this prohibition. Proposed projects that meet the requirements of a Bank's feasibility guidelines may include pre-development expenses as project costs in their AHP applications.

Several commenters supported the use of AHP subsidies for the sole purpose of determining the feasibility of housing. The Finance Board believes that this use of funds will not result in the actual purchase, construction, or rehabilitation of housing, as required by the statute. Further, since the inception of the Program, demand for AHP subsidies for feasible projects has significantly exceeded available funds. Thus, if AHP subsidies were to be approved for the sole purpose of determining the feasibility of housing, potentially significant amounts of subsidies that currently go toward completing projects might instead be paying for activities that never result in the financing or production of housing.

i. *District Eligibility Requirements.*

Section 960.5(b)(10) of the final rule carries forward the provisions in the proposed rule governing District eligibility requirements, which were referred to as "District threshold requirements" in the proposed rule. The notice of proposed rulemaking included an extensive discussion of the salient arguments in favor of and against the proposed District eligibility requirements. *See* 61 FR 57799, 57807–57809 (Nov. 8, 1996). The comments received by the Finance Board on these provisions either supported or objected to the proposal on many of the grounds discussed in the notice of proposed rulemaking. There was no consensus on two of the three optional District eligibility requirements. Although there was more prevalent opposition to the third requirement—that the member have used a Bank credit product in the past 12 months—the Finance Board feels that members and sponsors will have some influence on an individual Bank's decision regarding this option. Consequently, the Finance Board is finalizing the District eligibility provisions, as proposed, which provide the Banks with discretion to determine whether to adopt these eligibility requirements.

j. *The 20 percent Requirement.*

The final rule omits the provision in the proposed rule known as "the 20 percent requirement," which provided that households who own or rent AHP-assisted units shall pay no less than 20 percent of their gross monthly income towards monthly housing costs. The proposed rule carried forward provisions of the existing regulation and added some exceptions to the 20 percent requirement. Commenters generally supported the additional exceptions in the proposed rule and suggested the adoption of several other exceptions. The 20 percent requirement was intended to implement the maximum subsidy limitation requirement contained in section 10(j)(9)(F) of the Act. *See* 12 U.S.C. 1430(j)(9)(F).

In light of the fact that most projects come within the exceptions to the 20 percent requirement, the Finance Board believes that the 20 percent requirement no longer is an effective means of implementing the statutory maximum subsidy limitation. Further, the requirements in the final rule regarding project feasibility and need for subsidy are intended to implement this statutory requirement.

G. Procedure for Approval of Applications for Funding—§ 960.6

As part of the reorganization of the structure of the proposed rule, the final

rule consolidates and streamlines the proposed provisions governing funding periods, application requirements, and scoring and approvals of applications under a Bank's competitive application program. The final rule also integrates and streamlines provisions in the proposed rule governing funding under a Bank's homeownership set-aside programs.

1. Program Administration

Section 960.6(b)(1) of the final rule carries forward the proposed provisions permitting a Bank to accept applications for funding under its competitive application program during a specified number of funding periods each year, as determined by the Bank. The notice of proposed rulemaking requested comments on whether the Banks should be permitted to accept AHP applications on a rolling basis, and, if so, how applications would be scored under such a process. Of those commenters who addressed this issue, the majority opposed the acceptance of applications on a rolling basis. The Finance Board believes that a competitive process has worked well and has decided to maintain the AHP as a competitive program. Further, those commenters who supported funding on a rolling basis offered no way to score applications fairly under such a process.

The final rule omits the proposed provision requiring a Bank to notify members and other interested parties of: the amount of subsidy offered annually and in each funding period; District eligibility requirements; scoring guidelines; and application due dates. The final rule also omits the provisions of the proposed rule specifying the information required to be included in AHP applications. These changes are consistent with the Finance Board's intent to streamline the AHP regulation and to devolve to the Banks those aspects of the Program involving day-to-day administration. Accordingly, § 960.6(b)(2) of the final rule provides that a Bank shall require applicants for AHP subsidies under the Bank's competitive application program to submit information sufficient for the Bank to determine that a proposed AHP project meets applicable eligibility requirements and to evaluate the application pursuant to the regulatory scoring criteria.

2. Acceptance of Applications from Nonmembers

Sections 960.6(a) and (b)(1) of the final rule add provisions authorizing a Bank, in its discretion, to accept applications for funding under both its homeownership set-aside programs and its competitive application program from institutions with pending applications for membership in the Bank. This is intended to give the Banks greater flexibility in accommodating new members that desire to participate in the AHP before the membership application process has been completed. As discussed further below, an institution must be a member prior to actually receiving AHP subsidies.

3. Scoring of Applications

a. *In General.*

The notice of proposed rulemaking requested comments on all aspects of the proposed scoring provisions and on ways in which the scoring system could be simplified, such as by creating discrete scoring categories containing criteria required by the Act, criteria established by the Finance Board, and criteria established by the Banks. A number of commenters generally supported the scoring provisions as proposed and suggested limited changes. Some commenters suggested that the Finance Board permit the Banks, in consultation with their Advisory Councils, to establish their own scoring systems. Other commenters recommended that the scoring system be simplified, and that the Banks be given greater flexibility in adopting scoring criteria and allocating points among the criteria. Commenters stated that such changes would improve the Program's operating efficiency and enable the Banks to tailor their scoring systems to the needs of their Districts.

While the existing scoring process generally has worked well over the past seven years of the Program's operation and is familiar to Program users, the Finance Board agrees with commenters that a simpler and more flexible scoring system should improve operating efficiency and enhance the responsiveness of the Program to local District needs. Accordingly, § 960.6(b)(4) of the final rule revises the scoring system in the proposed rule to incorporate greater simplicity and flexibility, as discussed below.

b. *Revised Scoring System.*

(i) *Elimination of Two-Tiered Priority Scoring Process.*

The proposed rule established six priority categories, and required the Banks to allocate 60 of a total 100 points among those categories, with at least 8 points allocated to each category. In addition, the proposed rule established 4 scoring objectives categories, and required the Banks to allocate the remaining 40 points among these categories, with the targeting objective category receiving at least 8 points. Applications meeting at least two of the six priorities were considered priority applications and, as a group, were to be scored before applications meeting fewer than two of the priorities. Priority applications then were to be scored against each other based on the extent to which they met the priorities and the scoring objectives.

The final rule eliminates this two-tiered system of scoring priority applications before non-priority applications. Instead, § 960.6(b)(4) of the final rule establishes nine scoring criteria categories, and requires a Bank to score all applications for projects meeting the minimum eligibility requirements according to the nine criteria. Section 960.6(b)(4)(ii) requires a Bank to allocate 100 points among the nine scoring criteria, which incorporate the scoring priorities and objectives of the proposed rule with revisions as discussed below. At least 5 points must be allocated to each scoring criterion except for targeting, which must be allocated at least 20 points. Section 960.6(b)(4)(i) provides that a Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under paragraph (b)(4).

(ii) *Designation of Variable-and Fixed-Point Criteria.*

The proposed rule designated each proposed priority category as either a fixed-point or a variable-point criterion. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criterion. Section 960.6(b)(4)(iii) of the final rule requires each Bank to make the designation of criteria as either fixed or variable. The targeting criterion and the subsidy-per-unit criterion must be designated as variable-point criteria. When determining the extent to which competing projects satisfy a variable-point criterion, a Bank must award points to projects in a uniform and consistent manner. The nine scoring criteria are discussed below.

(iii) Donated Government-Owned or Other Properties Criterion.

Section 960.6(b)(4)(iv)(A) of the final rule revises the scoring criterion in the proposed rule for projects using government-owned property to provide scoring credit for projects using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or instrumentality thereof, or by any other party. The expansion of this criterion to include units or land owned by other parties responds to a number of commenters who pointed out that the stock of available federal government

properties continues to decrease. The criterion also has been revised to encourage the donation of property for AHP projects, which should reduce the costs of financing such housing

(iv) Not-For-Profit Organization or Government Entity Sponsor Criterion.

Section 960.6(b)(4)(iv)(B) of the final rule revises the scoring criterion in the proposed rule for projects sponsored by a not-for-profit organization or government entity by expanding the list of government entities to include Native American Tribes, Alaskan Native Villages, and the government entity for Native Hawaiian Home Lands, which are comparable to state or local government entities.

(v) Targeting Criterion.

Section 960.6(b)(4)(ii) of the final rule revises the proposed rule by increasing the required minimum allocation of points for the targeting scoring criterion from 8 to 20. This change is intended to promote the funding of projects that commit to the targeting objective, which the Finance Board views is an important goal of the Program.

Section 960.6(b)(4)(iv)(C)(*1*) of the final rule carries forward the proposed requirement that an application for a rental project shall be awarded the maximum number of points available under the targeting criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. The final rule clarifies that applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

The purpose of this targeting provision is to reduce the emphasis in the existing regulation on funding projects that are occupied solely by very low-income households. There was support among commenters for this goal, although commenters had different views as to whether 60 percent is the appropriate ceiling for mixed-income targeting. Several commenters opposed reducing the current bias against mixed-income housing in the AHP scoring system. The Finance Board believes that mixed-income housing projects should be competitive under the Program. Mixed-income housing promotes economic integration, which supports the long-term financial feasibility of a project and the empowerment of lower income residents.

The notice of proposed rulemaking requested comments on ways in which the targeting criterion could be structured so that it is more closely compatible with the monitoring requirements for AHP projects. Several commenters supported coordinating the targeting criterion with project monitoring requirements, and suggested that points under the targeting criterion should be awarded to projects based on targeting commitments made to funding sources other than the Banks. Section 960.6(b)(4)(iv)(C)(*1*) of the final rule adopts this approach as an option for the Banks in structuring their Programs. The final rule provides that in order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

Section 960.6(b)(4)(iv)(C)(*3*) of the final rule provides that a Bank, in its discretion, may score owner-occupied projects and rental projects separately under the targeting criterion. This is a change from the proposed rule, which required separate scoring. The purpose of allowing separate scoring is to offset what may be an inherent bias in the targeting criterion in favor of rental projects, which, in general, have more units targeted to very-low income households than do owner-occupied projects. The final rule permits the Banks to determine whether separate scoring is appropriate for the targeting criterion.

(vi) Community Development Criterion and Empowerment Criterion.

Section 960.6(b)(4)(iv)(E) of the final rule eliminates the proposed mandatory community development scoring criterion and replaces it with a mandatory scoring criterion for projects promoting empowerment. The proposed rule had a more limited version of the empowerment criterion as an optional District priority. Under § 960.6(b)(4)(iv)(F)(*2*) of the final rule, the community development criterion is now an optional District priority. Several commenters suggested that the community development criterion is inherently biased against rural projects and, therefore, should not be a mandatory criterion in a Bank's scoring system. Commenters also favored a mandatory criterion for empowerment, consistent with the existing regulation. The Finance Board agrees that promoting empowerment is a valuable aspect of projects and should be maintained as a mandatory criterion.

(vii) First and Second District Priorities.

Section 960.6(b)(4)(iv)(F) of the final rule carries forward the provision of the proposed rule requiring a Bank to select a District priority, as recommended by the Bank's Advisory Council and set forth in the Bank's AHP implementation plan, from a set of criteria listed in the AHP regulation. A number of commenters suggested that the Banks should be allowed to select criteria in addition to those listed in the proposed rule. Section 960.6(b)(4)(iv)(G) of the final rule provides for this by permitting a Bank to adopt a second District priority for projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and set forth in the Bank's AHP implementation plan. Further, under the Act, the Finance Board has a statutory mandate to promulgate regulations that specify priorities for the use of AHP subsidies. *See* 12 U.S.C. 1430(j)(9)(B). Consequently, the Finance Board may not, consistent with the statute, allow the Banks to have total discretion to determine priorities under the Program. Nonetheless, the Finance Board believes that the final rule provides the Banks with a large measure of discretion in this area by providing a relatively wide range of choices for the Banks' two District priorities. In addition, the final rule revises the proposed rule by allowing a Bank to adopt multiple criteria under its first District priority, as long as the total points available for meeting the criteria do not exceed the total points allocated to the priority. The final rule makes clear that a Bank's second District priority need not be chosen from the list of permissible criteria for the Bank's first District priority.

The final rule omits from the list of optional District priorities in § 960.6(b)(4)(iv)(F) the priority for projects with retention periods in excess of the minimum retention period required under the project eligibility standards in § 960.5(b)(7) of the final rule. Awarding points to projects for committing to retention periods longer than the minimum would require that such projects be monitored in excess of the minimum required retention period. In light of changes in the monitoring requirements, which are discussed further below, that are intended to permit the Banks to rely on monitoring

by other parties for most rental projects, the priority for projects with longer retention periods is no longer feasible.

Section 960.6(b)(4)(iv)(F)(*4*) of the final rule carries forward the proposed optional District priority for projects involving member financial participation (excluding the pass-through of AHP subsidy), such as providing market rate or concessionary financing, fee waivers, or donations. In the notice of proposed rulemaking, the Finance Board requested comments on whether this should be a mandatory scoring criterion or a project eligibility standard, and on whether a member should be deemed to meet such a scoring criterion based on the member's record of affordable housing lending activities apart from its lending under the Program.

Although members have played a critical role in the Program, their participation has not generally involved lending their own funds. Where a member lends its own funds to a project, it is more likely to underwrite the project for financial feasibility and monitor the project for AHP compliance. Greater member financial involvement in projects also builds member affordable housing lending capacity and expertise.

A number of commenters objected to making member financial participation a project eligibility standard or a mandatory scoring criterion because some projects may not require or be able to sustain additional debt. Requiring projects to have loans from a member may create a bias against projects serving lower income households, which often cannot support debt service because rents are too low. Further, smaller members, which may not have the capacity to finance a project loan, waive fees or donate funds, may be effectively precluded from participating in the Program. The Finance Board believes these arguments have merit. However, the Banks should be permitted to determine whether promoting some measure of member financial participation through the scoring system is appropriate in the Bank's District. Consequently, the final rule retains member financial participation as an optional District priority.

Commenters stated that favoring projects based on a member's record of affordable housing lending activities apart from its lending under the Program is inappropriate because the member's lending record is not directly relevant to the evaluation of a particular application for AHP subsidy, and a fair evaluation of a member's affordable housing record would be difficult to accomplish. The Finance Board agrees that this would present practical difficulties in Program administration and, therefore, has not included this criterion in the final rule.

(viii) Community Involvement Criterion.

Section 960.6(b)(4)(iv)(F)(*10*) of the final rule revises the proposed rule by removing community involvement as a mandatory scoring criterion and including it as an optional District priority in lieu of the proposed sweat-equity priority, which is incorporated in this priority. The final rule also deletes the proposed language allowing a Bank to give scoring credit under this criterion to projects receiving commitments of funds from local sources. This change was made because the criterion is intended to promote in-kind donations to projects.

(ix) Subsidy-Per-Unit Criterion.

Section 960.6(b)(4)(iv)(H) of the final rule carries forward the provisions in the proposed rule governing the subsidy-per-unit criterion, with the exception that a Bank, in its discretion, may determine whether owner-occupied projects and rental projects should be scored separately under this criterion. There may be an inherent bias in the subsidy-per-unit criterion in favor of rental projects, which, in general, have lower amounts of subsidy per unit than do owner-occupied projects. Therefore, as under the targeting criterion, the final rule permits the Banks to determine whether separate scoring is appropriate for this criterion.

The subsidy-per-unit criterion, in effect, favors projects with a shallower subsidy. A Bank may de-emphasize this effect and promote deeper subsidies per unit by allocating as few as five points to this criterion. The notice of proposed rulemaking requested comments on whether this gives the Banks adequate flexibility in applying the subsidy-per-unit criterion in their Districts. A number of commenters supported allowing the Banks to determine the number of points to allocate to the subsidy-per-unit criterion.

H. Modifications of Applications Prior to Project Completion—§ 960.7

Section 960.7 of the final rule incorporates several revisions to provisions in the proposed rule governing modifications of AHP applications under a Bank's competitive application program prior to project completion. First, the definition of "project modification" in the proposed rule is incorporated into the terms of § 960.7, and clarified to refer to modifications occurring prior to final disbursement of funds to the project from all funding sources.

Second, the final rule omits the provisions of the proposed rule specifying the information required to be included in requests for modifications. This change is consistent with the Finance Board's intent to streamline the AHP regulation and to devolve to the Banks those aspects of the Program involving day-to-day administration.

Third, § 960.7(a)(3) of the final rule revises the modification standards in the proposed rule by making all proposed modifications subject to a "good cause" requirement and permitting the Banks to determine whether a "good cause" showing has been made in individual cases. The proposed rule required the Banks to approve modifications not involving subsidy increases as long as a project continued to meet eligibility requirements and to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The purpose of this change is to give the Banks flexibility to determine on a case-by-case basis whether changes from a project's original AHP commitments are justified.

Fourth, the final rule omits the provision in the proposed rule prohibiting a Bank's board of directors from delegating to Bank officers or other Bank employees the authority to approve requests for modifications not involving a subsidy increase. A number of commenters supported this change, which conforms the final rule to the Banks' current practices.

Section 960.7(a)(2) of the final rule carries forward the requirement that, in order to receive a pre-completion modification, a project must continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The Finance Board wishes to make clear that where modifications are requested for applications that were scored and approved for funding prior to January 1, 1998, the application shall be rescored according to the scoring requirements in effect for the funding period in which the application was approved.

I. Procedure for Funding—§ 960.8

Section 960.8 of the final rule incorporates several substantive revisions to provisions in the proposed rule governing disbursement of AHP subsidies under a new section entitled "Procedure for Funding."

First, in light of the new provisions in § 960.6 permitting a Bank to accept AHP

applications from institutions with pending applications for membership, § 960.8(a)(1) of the final rule makes explicit that a Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy. Section 960.8(a)(2) also provides that if an institution with an approved application for AHP subsidy fails to obtain or loses its membership in the Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

Second, the provisions in the proposed rule governing disbursement of homeownership set-aside funds are consolidated into § 960.8(b), and a new provision is added in § 960.8(b)(1) requiring a Bank to cancel an application for homeownership set-aside funds and make the funds available for other applicants or for other AHP-eligible projects if the funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan. This is consistent with current Bank practices and parallels the requirement for the Banks' competitive application programs. A new provision also is added in § 960.8(b)(2)(iii), which states that, prior to disbursement of homeownership set-aside funds for counseling purposes, a Bank must require the member to certify that: (i) The funds will be used for counseling of homebuyers who actually purchase an AHP-assisted unit; (ii) The cost of the counseling has not been covered by another funding source, including the member; and iii) the funds will be used to pay for only the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years.

Third, the final rule omits the requirement in the proposed rule that a Bank obtain, and maintain in its project file, documents sufficient to demonstrate compliance with AHP requirements prior to making disbursements of AHP subsidy, including an independent, current appraisal provided by the member indicating the fair market value of the property or project if the member has a direct or indirect interest in such property or project. This change is consistent with the Finance Board's intent to streamline the AHP regulation. The Banks are in the best position to determine what kinds of documents must be maintained for purposes of the Bank's own recordkeeping and in order to support Bank decisions in the context of examinations by the Finance Board. The issue related to the use of AHP subsidies in projects involving real estate owned property provided by a member is specifically addressed in § 960.5(b)(2)(ii) of the final rule, which is discussed above.

Fourth, § 960.8(c)(3) of the final rule revises the provisions in the proposed rule governing changes in a project's approved AHP subsidy amount where a Bank provides a direct subsidy to write down the principal amount prior to closing or the interest rate on a loan provided by a member to a project. The final rule permits Banks not to increase the subsidy amount where market interest rates rise between the time the subsidy initially is approved by the Bank and the time the lender commits to the interest rate to finance the project. Several Banks objected to the proposed provision, which made such a subsidy increase mandatory, on the ground that subsidy increases should be subject to a process of negotiation between Banks, members, and projects in order to ensure that such increases are justified. By making such subsidy increases optional, the final rule is consistent with the current practices of some of the Banks.

Fifth, the final rule omits the language in the proposed rule requiring the Banks to ensure that AHP subsidies are passed on to the ultimate borrower, and that the preponderance of AHP subsidies is ultimately received by very low-and low-or moderate-income households. These requirements, including the provisions for matched repayment schedules for Bank subsidized advances and member loans, are implemented through § 960.13 of the final rule governing agreements between Banks and members.

Sixth, the final rule omits the requirement in the proposed rule that each Bank must ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program. Commenters objected to this requirement on the grounds that it is too vague and will discourage member participation in the Program. Commenters also suggested this requirement is duplicative of other Program requirements intended to ensure that AHP subsidies are properly used.

Seventh, § 960.5(b)(2)(iii) of the final rule incorporates the provision in the proposed rule requiring each Bank to ensure that the rate of interest, points, fees and any other charges for all loans financing an AHP project do not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk. The final rule also requires a Bank to determine that AHP subsidy is necessary for the financial feasibility of a project, as currently structured.

Eighth, the provisions in the proposed rule governing the lending of direct subsidies, matched repayment schedules, and prepayment fees charged by the Banks are implemented in a revised form through § 960.13 of the final rule governing agreements between Banks and members.

In the case of the matched repayment schedule requirement, § 960.13(c)(1) of the final rule provides that the term of a subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period. This is a change from the proposed rule, which required the principal repayments received by the member to be paid over to the Bank. According to commenters, the language in the proposed rule was too restrictive, because it referred to the actual principal repayments received by members and omitted mention of a member's independent obligation to repay an advance, without regard to the amount of principal repayments received by the member. Consequently, the language of the final rule is revised to clarify that the scheduled, rather than the actual, principal repayments must be equal, in a 12-month period.

J. Modifications of Applications After Project Completion—§ 960.9

Section 960.9 of the final rule adds a new provision permitting members to obtain modifications to approved AHP applications under a Bank's competitive application program after a project has been completed, as long as the modification does not require an increase in the amount of AHP subsidy provided to the project. In order for a project to obtain additional AHP subsidy after completion, such subsidy must be approved pursuant to a Bank's competitive application program. Under the proposed rule, modifications were available only prior to project completion.

Section 960.9 of the final rule provides that after final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may

approve in writing a modification to the terms of an approved application for subsidy funding the project, other than an increase in the amount of subsidy, if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that: (1) The project is in financial distress or is at substantial risk of falling into such distress; (2) the project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and AHP requirements; (3) the project, incorporating any material changes, would meet Program eligibility requirements; and (4) the application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The Finance Board wishes to make clear that where modifications are requested for applications that were scored and approved for funding prior to January 1, 1998, the application shall be rescored according to the scoring requirements in effect for the funding period in which the application was approved.

Section 960.9 is added in response to comments from the Banks requesting that the final rule include an alternative to addressing compliance issues through the AHP remedial process. *See also* § 960.12. Members, project sponsors, and project owners should use the modification process, where possible, as a means of addressing existing or potential AHP compliance issues on their own initiative rather than waiting for such issues to be brought to light and addressed through the remedial process.

K. Monitoring Requirements—§ 960.10 and § 960.11

1. In General

Section 10(j)(9)(C) of the Act requires the Finance Board to issue regulations ensuring "that advances made under [the] program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of [section 10(j) of the Act] are satisfied." *See* 12 U.S.C. 1430(j)(9)(C).

The existing AHP regulation requires each Bank to monitor member and project compliance with AHP requirements, but does not establish specific procedures, standards or documentation to assist the Banks in meeting that requirement. *See* 12 CFR 960.7(b), (c). Sections 960.6(b) and (c) of the existing regulation require members to file annual reports and certifications on the use of AHP subsidies. *See id.* § 960.6(b), (c).

In the absence of specific regulatory guidance, over the seven years that the Program has been in operation, the Banks have attempted to comply with their monitoring obligations by developing their own individual approaches to monitoring. This practice has led to uncertainty about the sufficiency of any one monitoring procedure. In addition, some members consider the certification and reporting requirements of the existing regulation to be too burdensome. In the notice of proposed rulemaking, the Finance Board proposed to establish clear, uniform monitoring procedures and standards that take into account the costs of monitoring relative to the benefits, and reduce the overall monitoring burden, including eliminating the annual reporting and certification requirement for members under the existing regulation. The Finance Board's proposal was based on the principles that: (1) Monitoring a project closely in its initial stages of development will ensure that less monitoring is necessary in the project's later stages of operation; (2) the degree of monitoring of AHP-assisted projects should be directly related to the amount of AHP subsidy funding such projects; and (3) the Banks should be permitted to rely, to the extent feasible, on monitoring by other funding sources.

A number of commenters stated that the various monitoring requirements in the proposed rule should be omitted or that the Banks should be permitted to develop their own monitoring procedures. As discussed above, the lack of clear and consistent standards may actually contribute to a more burdensome monitoring scheme, and the Finance Board intends to prevent this by setting standards in the regulation. In addition, the Finance Board believes that the final rule provides the Banks with additional flexibility by permitting them to rely on long-term monitoring by other entities for a majority of AHP-assisted rental projects.

2. Restructuring of the Monitoring Provisions

The final rule separates the section of the proposed rule governing monitoring into two sections governing initial monitoring requirements and long-term monitoring requirements, respectively. In addition, provisions on monitoring standards have been separated from provisions requiring that parties' obligations to comply with monitoring standards be implemented by specific agreements. The provisions related to monitoring agreements are incorporated in § 960.13(b)(4) of the final rule.

3. Initial Monitoring Requirements

As discussed above, the proposed provisions governing project monitoring were based, in part, on the principle that monitoring a project closely in its initial stages of development will ensure that less monitoring is necessary in the project's later stages of operation. Commenters generally supported this approach. Section 960.10 of the final rule carries forward the proposed provisions governing monitoring in the initial stages of project development, with the following substantive changes.

First, § 960.10(a)(2)(ii)(C) of the final rule clarifies that documentation maintained by rental project owners must include documentation of project habitability to support the owner's habitability certification to the Bank and the member. In response to requests for clarification from commenters, § 960.1 of the final rule makes clear that "habitable" means suitable for occupancy, taking into account local health, safety, and building codes. This definition is consistent with that used for purposes of monitoring projects receiving federal Low-Income Housing Tax Credits.

Second, §§ 960.10(c)(1)(ii) and (c)(2)(ii) of the final rule provide that for owner-occupied and rental projects, respectively, a Bank must review project documentation at project completion to determine that a project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and that the subsidies provided to the project were necessary for the financial feasibility of the project, as currently structured. This is consistent with the current practice of many of the Banks, which conduct closing audits for projects. Several commenters objected to this provision on the ground that it may discourage the use of AHP subsidies as "first-in" money for a project. The concern is that subsequent funders may be hesitant to commit funds to a project if AHP subsidies received by the project are subject to repayment in cases where a review of the project at completion reveals excess costs, and thus oversubsidization.

The Finance Board believes that requiring projects receiving AHP subsidies to demonstrate that their costs are customary and reasonable is essential to ensuring that such subsidies are used in accordance with a project's application for funding and the requirements of the AHP regulation. The

use of AHP subsidies as "first-in" money can be analogized to an equity investment. While an equity investor assumes some risk by providing "first-in" money, no equity holder would allow use of its investment in a project for excessive costs. Similarly, under the final rule, AHP subsidies that serve as "first-in" money will remain in a project as long as the costs incurred by the project are reasonable and customary. Therefore, while the final rule in no way is intended to prevent AHP subsidies from being used as "first-in" money, the final rule provides for safeguards against misuse of such subsidies, consistent with the requirements of other funding sources.

Third, § 960.10(d) of the final rule makes clear that for purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current median income data.

4. Long-Term Monitoring Requirements

Section 960.11 of the final rule governing long-term monitoring requirements after project completion applies solely to rental projects, because owner-occupied projects are not subject to ongoing household income requirements, and transfers of ownership are monitored through deed restrictions. Of the 3,704 existing AHP-assisted projects, 1,752 are owner-occupied projects. Therefore, almost half of all existing AHP-assisted projects are subject to deed restrictions in lieu of long-term monitoring. In addition, §§ 960.11 (a)(1) and (a)(2) of the final rule make the changes discussed below to the proposed provisions governing the long-term monitoring requirements for rental projects to allow greater reliance on monitoring by third parties.

a. *Reliance on Monitoring by a Federal, State or Local Government Entity.*

The proposed rule provided that for projects receiving $500,000 or less of AHP subsidies, a Bank could rely on monitoring by a housing credit agency providing federal Low-Income Housing Tax Credits to the project if: (1) The income targeting requirements, the rent requirements, and the retention period monitored by the housing credit agency are the same as, or more restrictive than, those committed to in the AHP application; (2) the housing credit agency agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the rent and income targeting requirements being monitored by the housing credit agency or where the project is not in a habitable condition; (3) the Bank does not have information that monitoring by such housing credit agency is not occurring or is inadequate; and (4) the Bank makes reasonable efforts to investigate any complaints received about the project.

The notice of proposed rulemaking requested comments on whether the proposed provisions permitting the Banks to rely on monitoring by other parties could be expanded to include government entities other than housing credit agencies. Comments also were requested on ways in which the targeting scoring objective in the proposed rule could be modified, or whether it should be eliminated, so that the income targeting and rent requirements for AHP projects would be compatible with those required and monitored by other government housing entities.

Commenters identified several other entities that undertake monitoring for program standards that are similar, and in some cases identical, to those under the AHP. However, it was not apparent from the comments that there are any government entities that monitor for compliance with requirements identical to those under the AHP on a consistent basis.

A number of commenters suggested that the Banks should be permitted to rely on monitoring by other entities that provide funding to a project even if the targeting, rent, and retention commitments monitored by the other entity do not match those made by the project under the AHP. However, the integrity of the Program's competitive application process depends upon projects being held to the commitments that they make in order to receive AHP subsidies. Further, project sponsors or owners may have a reduced incentive to comply with these commitments over the long term where they have the knowledge that they will not be monitored according to those commitments.

The final rule attempts to resolve the conflict discussed above by permitting the Banks to evaluate projects under the AHP scoring process according to the targeting commitments made by a project to a government entity providing funds to the project. As discussed previously, § 960.6(b)(4)(iv)(C)(*1*) of the final rule provides that in order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity.

In accordance with this change, § 960.11(a)(1) of the final rule expands the extent to which a Bank may rely on post-completion monitoring by government entities providing funds to a project. The final rule provides that for those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity after project completion if: (1) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application; (2) the entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements being monitored by the entity or where the project is not habitable; and (3) the entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

This is a change from the proposed rule which, as discussed above, limited reliance on third-party monitoring to monitoring conducted by housing credit agencies. In addition, the proposed rule limited such reliance to projects receiving $500,000 or less in AHP subsidies. The final rule also omits the requirements in the proposed rule that in cases where a Bank relies on a housing credit agency to monitor a project, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that they are accurate and in compliance with the rent and income targeting commitments made in the AHP application.

b. *Reliance on Monitoring of AHP Application Commitments By a Contractor.*

Section 960.11(a)(2) of the final rule also adds a new monitoring option for the Banks that is intended to expand the ability of the Banks to rely on post-completion monitoring by government entities providing funds to a project, where the government entity has different income targeting, rent, and retention requirements from those committed to by the project under the AHP.

Section 960.11(a)(2) provides that, for those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods

under its own program that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if: (1) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application; (2) the entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements committed to in the AHP application or where the project is not habitable; and (3) the entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that such monitoring is not occurring or is inadequate.

c. *Long-Term Monitoring Requirements Where Reliance on Government Entities Or Contractors Is Not Permitted.*

Under the final rule, where a Bank is not permitted to rely on post-completion monitoring by a federal, state, or local government entity, the Bank, members, and project owners must monitor projects in accordance with the requirements of § 960.11(a)(3) of the final rule. Section 960.11(a)(3) carries forward provisions in the proposed rule, and makes the following changes in order to reduce monitoring costs for Banks, members, and project owners. First, the final rule omits the requirement that a project owner annually must provide a list of tenant rents and incomes to the Bank.

Second, the final rule omits the provision in the proposed rule requiring the owner of a rental project to certify to the member and the Bank that the owner regularly informs households applying for and occupying AHP-assisted units of the address of the Bank that provided the AHP subsidy to finance the project. The final rule also eliminates the requirement that the Bank investigate complaints about the project. These changes have been made in response to several comments objecting to the above provisions on the ground that they place the Banks in the middle of landlord-tenant disputes, which is not an appropriate role for the Banks.

Third, under § 960.11(a)(3)(ii) of the final rule, for rental projects receiving $500,000 or less in AHP subsidy from a member, the member must perform exterior visual inspections of projects and certify to the Bank at least once every three, rather than two, years that the project appears to be suitable for occupancy.

Fourth, under § 960.11(a)(3)(*iii*)(B)(*3*) of the final rule, for rental projects receiving over $500,000 in AHP subsidy, a Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years, rather than annually, to verify compliance with the rent and income targeting commitments made in the AHP application and project habitability.

Section 960.11(a)(3)(iv) of the final rule makes clear that a Bank, in its discretion, may hire consultants or outside contractors to perform the Bank's ongoing long-term monitoring activities as the Bank's agents, for example, if the Bank determines that this is more cost-effective than having its own employees administer the Bank's monitoring responsibilities.

d. *Annual Adjustment of Targeting Commitments.*

As under the provisions governing initial monitoring requirements, § 960.11(b) of the final rule makes clear that for purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current median income data.

L. Remedial Actions for Noncompliance—§ 960.12

1. In General

Section 960.12 of the final rule revises the structure of the proposed rule governing remedies for noncompliance with AHP requirements by separating provisions on compliance standards from provisions requiring that compliance standards be implemented by specific agreements. The proposed provisions on compliance standards governing Banks, members and project sponsors and owners are retained and clarified in § 960.12, while provisions related to compliance agreements are incorporated in § 960.13 of the final rule.

2. Project Foreclosure

A number of commenters requested clarification on the liability of members and project owners where a project goes into foreclosure prior to the end of the retention period. Section 960.12 of the final rule makes a party's liability for repayment of AHP subsidies contingent upon that party's action or omission resulting in noncompliance with AHP requirements. Therefore, if, due to circumstances that are not the result of an action or omission of the member and project sponsor or owner, a project goes into foreclosure prior to the end of the project's retention period, the sponsor or owner is not liable for repayment of subsidies, and the member is required to recover and repay to the Bank only that amount that the member can recover through reasonable collection efforts, by exercising its legal rights against the project.

3. Degree of Culpability

Commenters also suggested that a project sponsor's or owner's liability to repay AHP subsidies should apply to cases of fraud or gross mismanagement but not simple negligence. The Finance Board believes that determinations as to degrees of culpability are best made on a case-by-case basis. This is reflected in § 960.12(c)(2) of the final rule, which permits Banks and members to settle claims for noncompliance taking into account factors such as the degree of culpability of the parties involved.

4. Provision for Members, Sponsors, and Owners to be Parties to Enforcement Proceedings

Section 960.12(d) of the final rule adds a new provision permitting a Bank, in its AHP implementation plan, to provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding. Under such an agreement, a member, sponsor, or owner who consents to be subject to a final determination of the Finance Board will have the same rights and remedies as a Bank in seeking review of such a determination.

5. Suspension and Debarment

Section 960.12(f)(2) of the final rule revises the provision in the proposed rule governing suspension and debarment of members and project sponsors and owners from participation in the Program by clarifying that suspension or debarment by the Finance Board is implemented through an order upon a Bank.

6. Procedure for Finance Board Action

Section 960.12(h) of the final rule clarifies that, except in cases where a Bank is seeking prior Finance Board review of a settlement agreement with a member, any actions taken by the Finance Board pursuant to section

960.12 shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations. Copies of these procedures are available from the Finance Board upon request.

M. Agreements—§ 960.13

1. In General

As discussed previously, § 960.13 of the final rule generally describes the kinds of agreements Banks must have in place with members in order to implement the various standards set forth in the final rule, including standards governing monitoring, retention, and repayment of subsidies. This section also describes special provisions that must be in place where members receive subsidized advances and direct subsidies, respectively. The final rule is not intended to prescribe the form of agreements between Banks and members or whether such agreements consist of one agreement or several separate agreements. Nor is a Bank precluded from making entities in addition to members, such as project sponsors or owners, parties to such agreements.

2. Retention Agreements

Sections 960.13(c) (4) and (5) and (d) (1) and (2) of the final rule incorporate and carry forward the provisions of the proposed rule governing retention of owner-occupied and rental projects. Section 960.1 of the final rule carries forward the provisions of the proposed rule defining the retention period as five years from closing for an AHP-assisted owner-occupied unit, and 15 years from the date of project completion for an AHP-assisted rental project. A number of commenters supported these retention periods. Some commenters supported other retention periods ranging from 3 to 25 years in the case of owner-occupied units, and 5 to 30 years in the case of rental projects. In light of the significant support for the proposed retention periods, the final rule retains the proposed retention periods.

The notice of proposed rulemaking requested comments on whether repayment of AHP subsidy should be required in all cases of refinancing by the homeowner prior to the end of the retention period of an AHP-assisted unit, rather than just in cases where the homeowner fails to ensure that the unit continues to be subject to a retention mechanism after the refinancing. Refinancing may allow the owner of an AHP-assisted unit, in effect, to take the subsidy out of the unit prior to the end of the five-year retention period, which may be perceived as a windfall to the owner. However, homeowners, generally, can take advantage of lower interest rates by refinancing their unit, and households that purchase AHP-assisted units should not be denied this opportunity. As long as the owner of an AHP-assisted unit ensures that after the refinancing, the unit continues to be subject to the initial AHP retention requirement, the goal of the Program is met.

Several commenters supported permitting refinancing without penalty, while others suggested various permutations of repayment requirements in this situation. The Finance Board continues to believe that households that have AHP-assisted units should be allowed to benefit from appreciation in the value of their homes, through refinancing or otherwise, to the same extent as other homeowners, as long as AHP retention requirements are satisfied. Therefore, § 960.13(d)(1)(iii) of the final rule carries forward the proposed provision on this issue, but makes this provision parallel with § 960.13(d)(1)(ii), which provides for pro rata repayment of the AHP subsidy upon sale of an AHP-assisted unit, unless the unit continues to be subject to the initial AHP retention requirement.

The notice of proposed rulemaking also requested comments on whether an owner of an AHP-assisted rental project should be required to repay the entire amount of AHP subsidy, versus a pro rata share, where the project is sold prior to the end of the retention period and the subsequent owner fails to agree in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. This requirement may serve to discourage the conversion of AHP-assisted rental projects into projects that charge market rents, prior to the end of the retention period. Several commenters supported requiring full repayment of subsidy where an AHP-assisted rental project is converted to market-rate housing. Despite good arguments on both sides of the issue, the Finance Board, as a matter of policy, has decided to retain this requirement in the final rule as a disincentive for project conversion prior to the end of the retention period. Therefore, §§ 960.13 (c)(5)(iii) and (d)(2)(iii) of the final rule carry forward the proposed provisions on this issue.

3. Termination of Income-Eligibility and Affordability Restrictions Upon Foreclosure

Sections 960.13 (c)(5)(iv) and (d)(2)(iv) of the final rule add a requirement that Banks include in their agreements with members a provision that the income-eligibility and affordability restrictions applicable to an AHP-assisted rental project may terminate upon foreclosure or upon transfer in lieu of foreclosure. This change was made in response to requests from commenters for clarification on this issue.

4. Lending of Direct Subsidies

For various tax reasons, sponsors prefer to structure projects involving federal Low-Income Housing Tax Credits so that AHP direct subsidies are loaned to the project. This use of direct subsidies raises the question whether the direct subsidies, which are grants, are being passed on to the ultimate recipients, as required under section 10(j)(9)(E) of the Act, since they may be repaid by the recipients. *See* 12 U.S.C. 1430(j)(9)(E).

The proposed rule reflected an attempt to accommodate the needs of sponsors and the statutory requirement governing the pass-through of AHP subsidies. It provided that a member or a sponsor may lend a direct subsidy in connection with an AHP-assisted rental project involving federal Low-Income Housing Tax Credits, provided that all payments by the borrower are deferred until the end of the loan term and no interest is charged. Upon repayment of the loan, the entire amount of the direct subsidy had to be repaid to the Bank.

Commenters stated that the proposed provisions did not adequately reflect the way that rental project financing is structured in all cases. For instance, members or sponsors may charge interest on direct subsidies lent to projects and may not require deferral of repayments. Section 960.13(d)(3) of the final rule is intended to broaden the language of the provisions of the proposed rule in order to make the final rule compatible with these financing structures. It provides that if a member or a project sponsor lends a direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank. The final rule also no longer limits lending of direct subsidies solely to situations involving projects receiving federal Low-Income Housing Tax Credits. This requirement is to be implemented through inclusion in agreements between Banks, members, and project sponsors.

5. Transfer of AHP Obligations Where a Member Loses Its Membership In the Bank

Section 960.13(b)(5) of the final rule provides that the member must make

best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

Under § 960.13(c)(6), if, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy upon prepayment or orderly liquidation by the nonmember of the subsidized advance. Under § 960.13(d)(4), if, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

As part of the notice of proposed rulemaking, the Finance Board published a request for comments concerning proposed changes to the collection of information in the existing AHP regulation, *see* 61 FR 57799, 57819–57820 (Nov. 8, 1996), which previously was approved by the Office of Management and Budget (OMB) and assigned OMB control number 3096–0006. The revised collection of information was submitted to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Finance Board also submitted to OMB for its approval an analysis of the proposed changes to the collection of information resulting from the proposed rule. The Finance Board received one comment on the proposed changes. The commenter suggested that the reporting and recordkeeping burden of the information collection may be understated on the grounds that it is not based on current hour and cost estimates and does not take into account the monitoring requirements in the proposed rule. The Finance Board based the hour and cost burden estimates for the information collection on current information available at the time the estimates were made. Further, the Finance Board's analysis of the information collection on file at OMB specifically sets forth hour and cost burden estimates for those aspects of the information collection related to monitoring. The Finance Board continues to believe that the burden estimates are accurate.

OMB has assigned a control number 3096–0006 and approved the revised information collection without conditions with an expiration date of December 31, 1999. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. *See* 44 U.S.C. 3512(a).

Although the final rule does not substantively or materially modify the approved information collection, it provides additional options in complying with long-term monitoring requirements, which may, in some cases, reduce the reporting and recordkeeping burden on respondents.

The estimated annual reporting and recordkeeping hour burden is:

a. *Number of respondents*—7462.

b. *Total annual responses*—9949. Percentage of these responses collected electronically—0%

c. *Total annual hours requested*—64,274.

d. *Current OMB inventory*—33,067.

e. *Difference*—31,207.

The estimated annual reporting and recordkeeping cost burden is:

a. *Total annualized capital/startup costs*—0.

b. *Total annual costs (O&M)*—0.

c. *Total annualized cost requested*—$2,117,450.00.

d. *Current OMB inventory*—0.

e. *Difference*—$2,117,450.00.

Comments concerning the information collection may be submitted to the Finance Board in writing at the address listed above and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

List of Subjects in 12 CFR Part 960

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

Accordingly, the Finance Board hereby revises part 960 of chapter IX, title 12, *Code of Federal Regulations* to read as follows.

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.

Authority: 12 U.S.C. 1430(j).

§ 960.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Advance means a loan to a member from a Bank that is:

(1) Provided pursuant to a written agreement; (2) Supported by a note or other written evidence of the member's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable means that the rent charged to a household for a unit that is committed to be affordable in an AHP application does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

AHP or *Program* means the Affordable Housing Program established pursuant to 12 U.S.C. 1430(j) and this part.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board of Directors means the Board of Directors of the Finance Board.

CIP means a Bank's Community Investment Program established under section 10(i) of the Act (12 U.S.C. 1430(i)).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment, but does not include homeownership set-aside funds.

Family member means any individual related to a person by blood, marriage or adoption.

Finance Board means the agency established as the Federal Housing Finance Board.

Habitable means suitable for occupancy, taking into account local health, safety, and building codes.

Homeless household means a household made up of one or more individuals, other than individuals imprisoned or otherwise detained pursuant to state or federal law, who:

(1) Lack a fixed, regular, and adequate nighttime residence; or

(2) Have a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeownership set-aside funds means funds provided to a member by a Bank pursuant to a Bank's homeownership set-aside program.

HUD means the Department of Housing and Urban Development.

Low-or moderate-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *low-or moderate-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income of 80 percent or less of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, *low-or moderate-income household* means a household which, upon initial occupancy of a rental unit, has an income at or below 80 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *low-or moderate-income household* means an occupying household which, at the time the purchase or rehabilitation is completed, has an income at or below 80 percent of the median income for the area.

(3) *Family-size adjustment.* The income limit for *low-or moderate-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area. (1) *Owner-occupied projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all owner-occupied projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the United States Department of Agriculture; or

(iv) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(2) *Rental projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all rental projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(3) *Procedure for approval.* Prior to requesting approval by the Board of Directors of a median income standard, a Bank shall amend its AHP implementation plan to permit the use of such standard, conditioned on Board of Directors approval. Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's pro rata share of the annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing, including condominiums and cooperative housing, by or for very low-or low-or moderate-income households.

Owner-occupied unit means a unit in an owner-occupied project.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing, including transitional housing for homeless households and mutual housing, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

Retention period means:

(1) 5 years from closing for an AHP-assisted owner-occupied unit; and

(2) 15 years from the date of project completion for a rental project.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest) in a rental project; or

(2) Is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units.

State means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.8(c)(3));

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through

its asset/liability management system, or otherwise; or

(3) Homeownership set-aside funds.

Very low-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *very low-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income at or below 50 percent of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, very low-income household means a household which, upon initial occupancy of a rental unit, has an income at or below 50 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *very low-income household* means an occupying household which, at the time the purchase or rehabilitation is completed, has an income at or below 50 percent of the median income for the area.

(3) *Family-size adjustment.* The income limit for *very low-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

§ 960.2 Required annual AHP contributions.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 960.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions.* (1) *Homeownership set-aside programs.* Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 15 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting such policies.

(2) *Competitive application program.* That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part.

(b) *AHP implementation plan.* (1) *Adoption of plan.* Each Bank's board of directors shall adopt a written AHP implementation plan which shall set forth:

(i) The applicable median income standard or standards, adopted by the Bank consistent with the definition of *median income for the area* in § 960.1;

(ii) The requirements for any homeownership set-aside programs adopted by the Bank pursuant to paragraph (a)(1) of this section;

(iii) The Bank's project feasibility guidelines, adopted consistent with § 960.5(b)(2);

(iv) The Bank's schedule for AHP funding periods;

(v) Any additional District eligibility requirement, adopted by the Bank pursuant to § 960.5(b)(10);

(vi) The Bank's scoring guidelines, adopted by the Bank consistent with § 960.6(b)(4);

(vii) The Bank's time limits on use of AHP subsidies and procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.8; and

(viii) The Bank's procedures for carrying out its monitoring obligations under §§ 960.10(c) and 960.11.

(2) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting the AHP implementation plan, or any subsequent amendments thereto.

(3) *Advisory Council review.* Prior to adoption of the Bank's AHP implementation plan, and any subsequent amendments thereto, the Bank shall provide its Advisory Council an opportunity to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) *Submission of plan to the Finance Board.* A Bank shall submit its initial AHP implementation plan, and any amendments, to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective.

(5) *Public Access.* A Bank's initial AHP implementation plan, and any subsequent amendments, shall be made available to members of the public, upon request.

(c) *Conflicts of interest*—(1) *Bank directors and employees.* Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring or any remedial process for such project.

(2) *Advisory Council members.* Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(3) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt conflicts of interest policies.

(d) *Reporting.* Each Bank shall provide such reports and documentation concerning its Program as the Finance Board may request from time to time.

§ 960.4 Advisory Councils.

(a) *In general.* Each Bank's board of directors shall appoint an Advisory Council of from 7 to 15 persons who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

(b) *Nominations and appointments.* Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses. The Bank's board of directors shall appoint Advisory Council members giving consideration to the size of the Bank's

District and the diversity of low- and moderate-income housing needs and activities within the District.

(c) *Diversity of membership.* In appointing the Advisory Council, a Bank's board of directors shall ensure that the membership includes persons drawn from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.

(d) *Terms of Advisory Council members.* The Bank's board of directors shall appoint Advisory Council members to serve for no more than three consecutive terms of three years each, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(e) *Election of officers.* Each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(f) *Duties.*—(1) *Meetings with the Banks.* Representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance and community investment mission, including, but not limited to, advice on the low- and moderate-income housing and community investment programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed.

(g) *Expenses.* The Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by the Finance Board.

§ 960.5 Minimum eligibility standards for AHP projects.

(a) *Homeownership set-aside programs.* A Bank's homeownership set-aside programs must meet the following requirements:

(1) Homeownership set-aside funds must be provided to members pursuant to allocation criteria established by the Bank;

(2) Members must provide homeownership set-aside funds only to households that:

(i) Are low-or moderate-income households, as defined in § 960.1;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively; and

(iii) Meet such other eligibility criteria that may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster-relief effort;

(3) Members must provide homeownership set-aside funds to households as a grant, in an amount up to a maximum of $10,000 per household, as established by the Bank, which limit shall apply to all households;

(4) Households must use homeownership set-aside funds to pay for downpayment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied housing unit, including a condominium or cooperative housing unit, to be used as the household's primary residence;

(5) A housing unit purchased or rehabilitated using homeownership set-aside funds must be subject to a retention agreement described in § 960.13(d)(1);

(6) If a member is providing mortgage financing to a participating household, the member must provide financial or other incentives in connection with such mortgage financing, and the rate of interest, points, fees, and any other charges by the member must not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk;

(7) Homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

(ii) The cost of the counseling has not been covered by another funding source, including the member; and

(iii) The homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years; and

(8) Homeownership set-aside funds must be drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan.

(b) *Competitive application program.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of this paragraph (b).

(1) *Owner-occupied or rental housing.* A project must be either an owner-occupied project or a rental project, as defined, respectively, in § 960.1.

(2) *Project feasibility and need for subsidy*—(i) *Sources and uses of funds.* The project's estimated uses of funds must equal its estimated sources of funds, as reflected in the project's development budget. A project's sources of funds must include:

(A) Estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project; and

(B) Estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity.

(ii) *Project costs*—(A) *In general.* Project costs, as reflected in the project's development budget, must be reasonable and customary, in accordance with the Bank's project feasibility guidelines, in light of:

(*1*) Industry standards for the location of the project; and

(*2*) The long-term financial needs of the project.

(B) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.

(iii) *Operational feasibility and need for subsidy.* The project must be

operationally feasible, in accordance with the Bank's project feasibility guidelines, based on relevant factors including, but not limited to, applicable financial ratios, geographic location of the project, needs of tenants, and other non-financial project characteristics. The requested AHP subsidy must be necessary for the financial feasibility of the project, as currently structured, and the rate of interest, points, fees, and any other charges for all loans financing the project must not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(3) *Timing of subsidy use.* The AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy funding the project.

(4) *Prepayment, cancellation, and processing fees.* The project must not use AHP subsidies to pay for:

(i) Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects;

(ii) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled; or

(iii) Processing fees charged by members for providing direct subsidies to a project.

(5) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(6) *Refinancing.* If the project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (b).

(7) *Retention*—(i) *Owner-occupied projects.* The project's AHP-assisted units are or are committed to be subject to a retention agreement described in § 960.13 (c)(4) or (d)(1).

(ii) *Rental projects.* AHP-assisted rental projects are or are committed to be subject to a retention agreement described in § 960.13 (c)(5) or (d)(2).

(8) *Project sponsor qualifications.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for subsidy funding the project.

(9) *Fair housing.* The project, as proposed, must comply with any applicable fair housing law requirements and demonstrate how the project will be affirmatively marketed.

(10) *District eligibility requirements.* (i) A project receiving AHP subsidies may be required by a Bank to meet one or more of the following additional eligibility requirements adopted by a Bank's board of directors, after consultation with its Advisory Council:

(A) A requirement that the amount of subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding period;

(B) A requirement that the project is located in the Bank's District; or

(C) A requirement that the member submitting the application has made use of a credit product offered by the Bank, other than AHP or CIP credit products, within the previous 12 months.

(ii) District eligibility requirements must apply equally to all members.

§ 960.6 Procedure for approval of applications for funding.

(a) *Homeownership set-aside programs.* A Bank shall accept applications for homeownership set-aside funds from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. The Bank shall approve applications in accordance with the Bank's criteria governing the allocation of funds.

(b) *Competitive application program*—(1) *Funding periods; amounts available.* A Bank shall accept applications for funding under its competitive application program from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. A Bank may accept applications for funding during a specified number of funding periods each year, as determined by the Bank. The amount of subsidies offered in each funding period shall be comparable.

(2) *Submission of applications.* A Bank shall require applicants for AHP subsidies to submit information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of § 960.5(b); and

(ii) Evaluate the application pursuant to the scoring criteria in paragraph (b)(4) of this section.

(3) *Review of applications for project eligibility.* A Bank shall review applications to determine that the proposed AHP project meets the eligibility requirements of § 960.5(b).

(4) *Scoring of applications*—(i) *In general.* A Bank shall score only those applications meeting the eligibility requirements of § 960.5(b). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (b)(4). A Bank shall adopt written guidelines implementing the scoring requirements of this paragraph (b)(4).

(ii) *Point allocations.* A Bank shall allocate 100 points among the nine scoring criteria identified in paragraph (b)(4)(iv) of this section. The scoring criterion identified in paragraph (b)(4)(iv)(C) of this section shall be allocated at least 20 points. The remaining scoring criteria shall be allocated at least five points each.

(iii) *Satisfaction of scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria. The number of points that may be awarded to an application for meeting a variable-point criterion will vary, depending on the extent to which the application satisfies the criterion, compared to the other applications being scored. A Bank shall designate the scoring criteria identified in paragraphs (b)(4)(iv) (C) and (H) of this section as variable-point criteria. The application(s) best achieving each variable-point criterion shall receive the maximum point score available for that criterion, with the remaining applications scored on a declining scale. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. An application meeting a fixed-point criterion shall be awarded the total number of points allocated to that criterion.

(iv) *Scoring criteria.* An application for a proposed project may receive points based on satisfaction of the nine scoring criteria set forth in this paragraph (b)(4)(iv).

(A) *Use of donated government-owned or other properties.* The creation of housing using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or

instrumentality thereof, or by any other party.

(B) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(C) *Targeting.* The extent to which a project creates housing for very low- and low- or moderate-income households.

(*1*) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area. In order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

(*2*) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on the percentage of units in the project to be provided to households with incomes at or below 80 percent of the median income for the area. Points shall be awarded on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.

(*3*) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(D) *Housing for homeless households.* The creation of transitional housing, excluding overnight shelters, for homeless households permitting a minimum of six months occupancy, or the creation of rental housing reserving at least 20 percent of the units for homeless households.

(E) *Promotion of empowerment.* The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership or tenant counseling; daycare services; resident involvement in decisionmaking affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(F) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(*1*) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS;

(*2*) *Community development.* The creation of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(*3*) *First-time homebuyers.* The financing of housing for first-time homebuyers;

(*4*) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(*5*) *Disaster areas.* The financing of housing located in federally declared disaster areas;

(*6*) *Rural.* The financing of housing located in rural areas;

(*7*) *Urban.* The financing of urban in-fill or urban rehabilitation housing;

(*8*) *Economic diversity.* The creation of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in areas where the median household income exceeds 80 percent of the median income for the area;

(*9*) *Fair housing remedy.* The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or any other federal, state, or local fair housing law, or as part of a settlement of such claims;

(*10*) *Community involvement.* Demonstrated support for the project by local government, community organizations, or individuals other than as project sponsors through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(*11*) *Lender consortia.* The involvement of financing by a consortium of at least two financial institutions; or

(*12*) *In-District projects.* The creation of housing located in the Bank's District.

(G) *Second District priority—defined housing need in the District.* The satisfaction of a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (b)(4)(iv)(F) of this section, provided it is different from the criterion or criteria adopted by the Bank under paragraph (b)(4)(iv)(F) of this section.

(H) *AHP subsidy per unit.* The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(I) *Community stability.* The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(5) *Approval of applications*—(i) *Approval by Bank's board.* The board of directors of each Bank shall approve applications in descending order

starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board of directors also shall approve at least the next four highest scoring applications as alternates and, within one year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to approve or disapprove AHP applications.

§ 960.7 Modifications of applications prior to project completion.

(a) *Modification procedure.* Prior to final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may approve in writing a modification to the terms of an approved application for subsidy funding the project if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that:

(1) The project, incorporating any such changes, would meet the eligibility requirements of § 960.5(b);

(2) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

(3) There is good cause for the modification.

(b) *Modifications involving a subsidy increase.* Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

§ 960.8. Procedure for funding.

(a) *Disbursement of subsidies to members.* (1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy.

(2) If an institution with an approved application for AHP subsidy fails to obtain or loses its membership in a Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

(b) *Homeownership set-aside programs*—(1) *Time limit on use of subsidies.* If homeownership set-aside funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel the application for funds and make the funds available for other applicants for homeownership set-aside funds or for other AHP-eligible projects.

(2) *Member certification upon disbursement.* Prior to disbursement of homeownership set-aside funds by a Bank to a member, the Bank shall require the member to certify that:

(i) The funds received from the Bank will be provided to a household meeting the eligibility requirements of § 960.5(a)(2);

(ii) If the member is providing mortgage financing to the household, the member will provide financial or other incentives in connection with such mortgage financing, and the rate of interest, points, fees, and any other charges by the member will not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk; and

(iii) Funds received from the Bank for homebuyer counseling costs will be provided according to the requirements of § 960.5(a)(7).

(c) *Competitive application program*—(1) *Time limit on use of subsidies.* If AHP subsidies approved for a project under a Bank's competitive application program are not drawn down and used by the project within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel its approval of the application for the subsidies and make the subsidies available for other AHP-eligible projects.

(2) *Compliance upon disbursement of subsidies.* A Bank shall verify prior to its initial disbursement of subsidies for an approved project, and prior to each disbursement thereafter, that the project meets the eligibility requirements of § 960.5(b) and all obligations committed to in the approved application.

(3) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.*—(i) *Change in subsidy amount.* If a member is approved to receive a direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost for the loan decreases from the amount of subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank may, in its discretion, increase the subsidy amount accordingly.

(ii) *Reconciliation of AHP fund.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund, If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

§ 960.9 Modifications of applications after project completion.

Modification procedure. After final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may approve in writing a modification to the terms of an approved application for subsidy funding the project, other than an increase in the amount of subsidy approved for the project, if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that:

(a) The project is in financial distress, or is at substantial risk of falling into such distress;

(b) The project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and the requirements of this part;

(c) The project, incorporating any material changes, would meet the eligibility requirements of § 960.5(b); and

(d) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank.

§ 960.10 Initial monitoring requirements.

(a) *Requirements for project sponsors and owners*—(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable

progress is being made towards completion of the project.

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must certify annually to the member and the Bank, until all approved AHP subsidies are provided to eligible households in the project, that those households receiving AHP subsidies during the year were eligible households, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank.

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion of the project.

(ii) Within the first year after project completion, the project owner must:

(A) Certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project;

(B) Provide a list of actual tenant rents and incomes to the member and the Bank and certify that:

(*1*) The tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application; and

(*2*) The project is habitable; and

(C) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the member or the Bank, to support such certifications.

(b) *Requirements for members*—(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(ii) Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that:

(A) The AHP subsidies have been used according to the commitments made in the AHP application; and

(B) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1);

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(ii) Within the first year after project completion, the member must review the project documentation and certify to the Bank that:

(A) The project is habitable;

(B) The project meets its income targeting commitments; and

(C) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

(c) *Requirements for Banks*—(1) Owner-occupied projects. Each Bank must take the steps necessary to determine, based on a review of the documentation for a sample of projects and units within one year of receiving the certifications described in paragraph (b)(1)(ii) of this section that:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households were qualified by the sponsor to participate in the project;

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured; and

(iii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1).

(2) *Rental projects.* Each Bank must take the steps necessary to determine that:

(i) Within the first year after completion of a rental project, the services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.11 Long-term monitoring requirements.

(a) *Rental projects.* For purposes of monitoring a rental project, Banks, members, and project owners shall carry out their long-term monitoring obligations pursuant to one of the three methods set forth in this paragraph (a).

(1) *Reliance on monitoring by a federal, state or local government entity.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity if:

(i) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements being monitored by the entity or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(2) *Reliance on monitoring of AHP application commitments by a contractor.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods under its own program that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if:

(i) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements committed to in the AHP application or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that

such monitoring is not occurring or is inadequate.

(3) *Long-term monitoring by the Banks, members, and project owners.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(1) or (a)(2) of this section, the Bank, members, and project owners shall monitor rental projects according to the requirements in this paragraph (a)(3).

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

(*1*) The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and

(*2*) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving $500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks*—(A) *Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(*1*) *$50,001 to $250,000.* For projects receiving $50,001 to $250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(*2*) *$250,001 to $500,000.* For projects receiving $250,001 to $500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(*3*) *Over $500,000.* For projects receiving over $500,000 of AHP subsidies, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years.

(C) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the project documentation supporting the certifications made by members and project owners.

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.12 Remedial actions for noncompliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Board of Directors that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

(e) *Use of repaid subsidies.* Amounts repaid to a Bank pursuant to this section shall be made available for other AHP-eligible projects.

(f) *Suspension and debarment*—(1) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(g) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations.

§ 960.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions*—(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

(2) *Use of subsidy*—(i) *Use of subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(ii) *Use of subsidy by the project sponsor or owner.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(3) *Repayment of subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of § 960.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of § 960.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of § 960.12(a)(2).

(4) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§ 960.10(b) and 960.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of § 960.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§ 960.10(a)(2) and 960.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(c) *Special provisions where members obtain subsidized advances*—(1) *Repayment schedule.* The term of the subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(2) *Prepayment fees.* Upon a prepayment of the subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(3) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by a subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(i) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(ii) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(4) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit financed by a loan from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period; and

(ii) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4).

(5) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by a loan from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the sale or refinancing, shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project may terminate upon foreclosure or upon transfer in lieu of foreclosure.

(6) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy upon prepayment or orderly liquidation by the nonmember of the subsidized advance.

(d) *Special provisions where members obtain direct subsidies*—(1) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit financed by the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low-or moderate-income household; and

(iii) In the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the occupying household has owned the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1).

(2) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, an amount equal to the full amount of the direct subsidy shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project may terminate upon foreclosure or upon transfer in lieu of foreclosure.

(3) *Lending of direct subsidies.* If a member or a project sponsor lends a direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank.

(4) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy.

§ 960.14 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension*—(1) *Notification to Finance Board.* If a Bank finds that the contributions required pursuant to § 960.2 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

(i) The period of time for which the Bank seeks a suspension;

(ii) The grounds for a suspension;

(iii) A plan for returning the Bank to a financially stable position; and

(iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Board of Directors review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Board of Directors shall consider such factors as:

(i) Whether the Bank's earnings are severely depressed;

(ii) Whether there has been a substantial decline in the Bank's membership capital; and

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Board of Directors shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board of Directors decision.* The Board of Directors' decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Board of Directors approves a Bank's application for a temporary suspension, the Board of Directors' written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Board of Directors, the affected Bank shall provide to the Board of Directors such financial reports as the Board of Directors shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension.* If, prior to the conclusion of the temporary suspension period, the Board of Directors determines that the Bank has returned to a position of financial stability, the Board of Directors may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period.* If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

§ 960.15 Affordable Housing Reserve Fund.

(a) *Reserve Fund*—(1) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 960.2, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund.

(2) *Use or commitment of funds.* Approval of applications for AHP subsidies sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.2 shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(i) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program; or

(ii) Pending applications for funds under the Bank's homeownership set-aside programs.

Such insufficient amounts shall be carried over for use or commitment during the following year.

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) *Annual notification.* By January 31 of each year, the Finance Board shall notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

§ 960.16 Application to existing AHP projects.

The requirements of section 10(j) of the Act and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, sponsors, or owners receiving AHP subsidies. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

By the Board of Directors of the Federal Housing Finance Board.

Dated: June 25, 1997.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–20046 Filed 8–1–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–149–AD; Amendment 39–10100; AD 97–16–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires a one-time inspection to detect fatigue cracking of the hinges of the cargo doors, and repair, if necessary. This amendment is prompted by reports indicating that, during inspections of the cargo door area, fatigue cracking of hinges of the cargo doors was detected. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in structural failure of the cargo doors, and consequent rapid decompression of the airplane and possible separation of the cargo doors from the airplane during flight.

DATES: Effective August 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1997.

Comments for inclusion in the rules docket must be received on or before October 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received reports indicating that, during scheduled visual inspections of the cargo door area, fatigue cracking of the hinges of the forward, center, and rear cargo doors were found. This cracking occurred much earlier than anticipated by fatigue analysis and test results. Therefore, the threshold for inspection of the cargo door hinges specified in the Airworthiness Limitations Items (ALI) and Maintenance Review Board (MRB) task numbers 523052–00–02 and 523052–00–03 may need to be adjusted. Investigation is continuing to determine if other factors (such as a jamming cargo net at the door hinge, a cargo door that slams against the fuselage when it is opened, etc.) may have contributed to the cracking of the hinges.

Fatigue cracking of the hinges of the cargo doors, if not detected and corrected in a timely manner, could result in structural failure of the cargo doors, and consequent rapid decompression of the airplane and possible separation of the cargo doors from the airplane during flight.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–52–061, dated September 28, 1996, which describes procedures for a one-time inspection to detect fatigue cracking of the hinges of the cargo doors. The service bulletin also provides a form for operators to report the results of the one-time inspection. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive (BLA) 1996–125 (A), dated September 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require a one-time inspection to detect fatigue cracking of the hinges of the cargo doors, and repair, if necessary. This AD also requires that operators submit a report of the findings of the one-time inspection required by this action to the airplane manufacturer. The information obtained from these reports will enable the manufacturer to determine if other factors may have contributed to the fatigue cracking of the hinges. The inspections are required to be accomplished in accordance with the service bulletin described previously. Repair of any fatigue cracking detected, is required to be accomplished in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

None of the Model F28 Mark 0100 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $120 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–149–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

97–16–08 Fokker: Amendment 39–10100. Docket 97–NM–149–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11474 inclusive, equipped with small cargo doors having hinge assemblies having part numbers A28410–405, A28410–407, and/or D28410–409; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the hinges, which could result in rapid decompression of the airplane and separation of the cargo doors during flight; accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 5 months after the effective date of this AD, whichever occurs later: Perform a one-time inspection to detect fatigue cracking of the hinges of the forward, center, and aft cargo doors, in accordance with Fokker Service Bulletin SBF100–52–061, dated September 28, 1996. Prior to further flight, repair any cracking detected, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results to Fokker Services, Attn: Manager, Service Engineering—Jet, P. O. Box 75047, 1117 ZN Schiphol-Oost, The Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100–52–061, dated September 28, 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 Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 19, 1997.

Issued in Renton, Washington, on July 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–20440 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7432; 34–38883; 35–26747; 39–2356; IC–22769]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

DATES: The amendment to 17 CFR part 232 (Regulation S–T) will be effective on August 25, 1997. The new edition of the EDGAR Filer Manual (Release 5.30) will be effective on August 25, 1997. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the **Federal Register** as of August 25, 1997.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0633; and for questions concerning Corporation Finance company filings, Margaret R. Black at (202) 942–2933.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) (58 FR 18638). The most recent update to the Filer Manual was implemented on April 14, 1997. *See* Release Nos. 33–7394 (Feb. 21, 1997) (62 FR 8877), 33–7405 (Mar. 19, 1997) (62 FR 13820), and 33–7411 (Apr. 2, 1997) (62 FR 16690).

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

filing when preparing documents for electronic submission.[3]

In this update, several submission types have been added. First, EDGAR submission types 13F–HR, 13F–HR/A, 13F–NT, and 13F–NT/A have been added. These submission types will accommodate the electronic submission of reports on Form 13F[4] in the event that the Commission amends its rules to require mandatory electronic filing of Form 13F.[5]

Also added are EDGAR submission types U–9C–3 and U–9C–3/A. These submission types are to be used by public utility holding companies for the submission of Form U–9C–3, Report Pursuant to Rule 58.[6]

Finally, a new submission has been added to accommodate electronic submissions of certain filings by companies whose filings are within the purview of the Division of Corporation Finance. Submission type POS EX has been added to reflect the Commission's recent adoption of Rule 462(d) under the Securities Act of 1933. This rule will permit automatic effectiveness of a post-effective amendment filed solely to add an exhibit.

The following submission types have been eliminated from EDGAR: 10–C, 10–C/A, 486A24E, 486A24F, 486B24E, 48624F, 8–B12B, 8–B12B/A, 8–B12G, 8–B12G/A, 8A12BEF, 8A12BT, and 8A12BT/A.

Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The revised Filer Manual and the amendment to Rule 301 will be effective on August 25, 1997.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, NW., Washington DC 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[7] It follows that the requirements of the Regulatory Flexibility Act[8] do not apply.

The effective date for the updated Filer Manual and the rule amendment is on August 25, 1997. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.30 on August 23, 1997. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

Statutory Basis

The amendment to Regulation S–T is being adopted under sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[9] sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[10] section 20 of the Public Utility Holding Company Act of 1935,[11] section 319 of the Trust Indenture Act of 1939,[12] and sections 8, 30, 31, and 38 of the Investment Company Act.[13]

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The August 1997 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.30)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, NW., Washington, DC 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 576–4247.

By the Commission.

Dated: July 29, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20413 Filed 8–1–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–032–FOR]

Missouri Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface

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[3] *See* Release Nos. 33–6977 (Feb. 23, 1993) (58 FR 14628), IC–19284 (Feb. 23, 1993) (58 FR 14848), 35–25746 (Feb. 23, 1993) (58 FR 14999), and 33–6980 (Feb. 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) (59 FR 67752), in which the Commission made the EDGAR rules final and applicable to all domestic registrants, and Release No. 33–7427 (July 1, 1997) (62 FR 36450), adopting the most recent minor amendments to the EDGAR rules.

[4] 17 CFR 249.325.

[5] *See* Release No. 34–38800 (July 1, 1997) (62 FR 36467), in which the Commission proposed to require electronic filling of Form 13F via the EDGAR system.

[6] 17 CFR 259.208. *See* Release No. 35–26667 (Feb. 14, 1997) (62 FR 7900).ab

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 553(b).

[9] 15 U.S.C. 77f, 77g, 77h, 77j and 77*s*(a).

[10] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78ll.

[11] 15 U.S.C. 79t.

[12] 15 U.S.C. 77sss.

[13] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed to amend its revegetation success guidelines by revising its special requirements for ground cover density on previously mined areas in the phase III revegetation success standards sections of its guidelines for pasture and adding special requirements for ground cover density on previously mined areas in the phase III revegetation success standards sections of its guidelines for wildlife habitat, woodland, industrial/commercial, residential, and recreation lad uses. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and improve operational efficiency.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated April 16, 1997 (Administrative Record No. MO–649), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the April 29, 1997, **Federal Register** (62 FR 23194), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequately of the proposed amendment. The public comment period closed on May 29, 1997. Because no one requested a public hearing or meeting, none was held.

By letter dated May 29, 1997 (Administrative Record No. MO–649.3), Missouri submitted revisions to its proposed program amendment. Missouri proposed to withdraw the portion of its proposed amendment pertaining to the optional use of county average yields for determining prime farmland revegetation success and to revise the portion of its proposed amendment pertaining to special requirements for ground cover density on previously mined areas reclaimed to a pasture land use. Missouri submitted the revisions at its own initiative.

Based upon the revisions to the proposed program amendment submitted by Missouri, OSM reopened the public comment period in the June 10, 1997, **Federal Register** (62 FR 31541). The public comment period closed on June 25, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's finding concerning the proposed amendment.

Missouri proposed to amend its Phase III revegetation success guidelines for pasture, wildlife habitat, woodland, industrial/commercial, residential, and recreation land uses concerning the standard to be applied to previously mined land. Where the premining use and the postmining use are the same, Missouri proposed to require that the ground cover on previously mined lands be restored to at least its original density, but not less than that necessary to control erosion. If the premining use and postmining use are not the same or the premining ground cover was not recorded before the area's redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined once during the last year of the five-year liability period. Productivity testing is not required on pasture land that was previously mined. The proposal revises the current guidelines for reclamaining previously mined areas to pasture. Missouri currently does not have any provision for reclamining previously mined areas to wildlife habitat, woodland, industrial/commercial, residential, or recreation land uses.

There are no direct Federal regulation counterparts for reclaiming previously mined lands to a specific land use. However, the Federal regulations at 30 CFR 816.116/817.116(b)(5) and Missouri's regulations at 10 CSR 40.3.120/3.270(6)(B)2.I require that vegetative ground cover for areas previously disturbed by mining that were not reclaimed to permanent program performance standards and that are remined, or otherwise redisturbed by surface coal mining operations, shall be no less than the ground cover existing before redisturbance and shall be adequate to control erosion. The Federal regulations at 30 CFR 816.116/817.116(c)(2)(ii) require that the vegetative parameters of areas previously disturbed by mining shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

The portion of Missouri's proposal in which the premining use and the postmining use are the same contains substantively identical requirements as the Federal regulations for areas previously disturbed by mining in that the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. Therefore, the Director finds that these revisions to Missouri's revegetation success guidelines are no less effective than the Federal regulations at 30 CFR 816.116/817.116(b)(5).

The portion of Missouri's proposal in which the premining use and the postmining use are not the same or the premining ground cover density was not recorded before the area's redisturbance, when read in combination with the Missouri regulations at 10 CSR 40.3.120/3.270(6)(B)2.I which require that ground cover on redisturbed sites be adequate to control erosion, ensures that the 70 percent ground cover requirement is a minimum density standard that will be adjusted upward if the density is not adequate to control erosion. Therefore, the Director finds these proposed revisions are no less effective than the Federal regulations at 30 CFR 816.116/817.116(b)(5).

Additionally, the Director finds that the portion of Missouri's proposal which requires that the ground cover be determined once during the last year of the five-year liability period is consistent with and no less effective than the Federal requirements at 30 CFR 816.116/817.116(c)(2)(ii).

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various

Federal agencies with an actual or potential interest in the Missouri program. No comments were received from the Federal agencies.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. MO–649.1). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. MO–649.1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Missouri on April 16, 1997, and as revised on May 29, 1997, concerning revisions to its revegetation success guidelines that revised or added special requirements for ground cover density on previously mined areas in the phase III revegetation success standards sections of its guidelines for pasture, wildlife habitat, woodland, industrial/commercial, residential, and recreation land uses. The Director approves the revegetation success guidelines as proposed by Missouri with the provision that they be fully implemented in identical form to those submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Narional Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

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

2. Section 925.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
•	•	•
April 16, 1997	August 4, 1997	Section I of Phase III Revegetation Success Standards for Pasture, Wildlife Habitat, Woodland, Industrial/Commercial, Residential, and Recreation.

[FR Doc. 97–20400 Filed 8–1–97; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[UT–035–FOR]

Utah Regulatory Program and Utah Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program and Utah abandoned mine land reclamation (AMLR) plan (hereinafter, the "Utah program and plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to and additions of statutes pertaining to the definition for "adjudicative proceeding"; schedule of applicant's mining law violations and remining operation violations resulting from unanticipated events or conditions; location of informal conferences; performance standards for all coal mining and reclamation operations and approximate original contour variances for surface coal mining operations; requirements regarding surface effects of underground coal mining, repair or compensation for damage, replacement of water, suspension of underground mining upon finding of immediate danger to inhabitants at the surface, and applicability to other chapters; contest of violation or amount of civil penalty; and lands and waters eligible for expenditure of AMLR funds. The amendment was intended to revise the Utah program and plan to be consistent with SMCRA and to improve operational efficiency.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division; telephone: (303) 844–1424; Internet address: WWW.JFULTONOSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program; on June 3, 1983, the Secretary approved the Utah plan. General background information on the Utah program and plan, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated May 27, 1997, Utah submitted a proposed amendment to its program and plan (administrative record No. UT–1090) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16 (e) through (i), in response to a June 5, 1996, letter (administrative record No. UT–1083) that OSM sent to Utah in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of the Utah coal mining and reclamation statute that Utah proposed to revise or add were: Utah Code Annotated (UCA) 40–10–3(1), definition for "adjudicative proceeding"; UCA 40–10–11 (3) and (5), schedule of applicant's mining law violations and remining operation violations resulting from unanticipated events or conditions; UCA 40–10–13(2), location of informal conferences; UCA 40–10–17 (2), (3), and (4), performance standards for all coal mining and reclamation operations and approximate original contour variances for surface coal mining operations; UCA 40–10–18 (1) through (15), 18.1, and 18.2, requirements regarding surface effects of underground coal mining, repair or compensation for damage, replacement of water, suspension of underground mining upon finding of immediate danger to inhabitants at the surface, and applicability of other chapter provisions; UCA 40–10–20(2) (2)(e), contest of violation or amount of civil penalty; and UCA 40–10–25(6), lands and waters eligible for expenditure of AMLR funds.

OSM announced receipt of the proposed amendment in the June 13, 1997, **Federal Register** (62 FR 32255), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–1095). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 14, 1997.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA, 30 CFR 732.15 and 732.17, and 30 CFR 884.14 and 884.15, finds that the proposed program and plan amendment submitted by Utah on May 27, 1997, is no less stringent than SMCRA and consistent with SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Statutes

Utah proposed revisions to the following previously-approved statutes concerning underground mining that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding SMCRA provisions are listed in parentheses):

UCA 40–10–17 (2) (j)(ii)(B), (p) (ii) and (iii); (3) (a) and (c); and (4), (4) (a) and (d), performance standards for all coal mining and reclamation operations, and approximate original contour variances for surface coal mining operations (sections 515 (b) (10)(B)(ii), (16) (B) and (C); (c) (2) and (6); and (d), (d) (1) and (4) of SMCRA),

UCA 40–10–18(1), adoption of rules for control of surface effects of underground coal mining operations (section 516(a) of SMCRA),

UCA 40–10–18(2), requirements for underground coal mining permits (section 516(b) of SMCRA),

UCA 40–10–18(3) (a), (a) (i) through (iii), and (b), prevention of subsidence effects (section 516(b)(1) of SMCRA),

UCA 40–10–18(4), filling or sealing of portals, entryways, drifts, shafts, or other openings (section 516(b)(2) of SMCRA),

UCA 40–10–18(5), sealing of exploratory holes and return of mine waste to mine workings or excavations (section 516(b)(3) of SMCRA),

UCA 40–10–18(6) (a), (b), and (b) (i) through (iii), surface disposal of mine waste (section 516(b)(4) of SMCRA),

UCA 40–10–18(7), dams or embankments constructed of coal mine waste (section 516(b)(5) of SMCRA),

UCA 40–10–18 (8), (8) (a) and (b), revegetation (section 516(b)(6) of SMCRA),

UCA 40–10–18(9), protection of offsite areas from damage (section 516(b)(7) of SMCRA),

UCA 40–10–18(10), elimination of fire hazards and public health and safety hazards (section 516(b)(8) of SMCRA),

UCA 40–10–18 (11), (11)(a), and (11)(a) (i) through (iii), minimization of disturbances of the prevailing hydrologic balance (section 516(b)(9)(A) of SMCRA),

UCA 40–10–18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement (section 516(b)(9)(B) of SMCRA),

UCA 40–10–18(12) (a), (a) (i) through (iii), and (b), applicability of UCA 40–10–17 for roads, structures, and facilities, and accommodation in requirements to take into account the distinct differences between surface and underground coal mining methods (section 516(b)(10) of SMCRA),

UCA 40–10–18(13), minimization of adverse impacts to fish, wildlife, and related environmental values (section 516(b)(11) of SMCRA),

UCA 40–10–18(14), prevention of acid mine drainages (section 516(b)(12) of SMCRA),

UCA 40–10–18(15)(a), requirements for underground coal mining operations conducted after October 24, 1992 (section 720(a) of SMCRA),

UCA 40–10–18(15)(b) (i) through (iv), repair or compensation for damage caused by subsidence to occupied residential dwellings, related structures, and noncommercial buildings (section 720(a)(1) of SMCRA),

UCA 40–10–18(15)(d), nothing to be construed in UCA 40–10–18(15) to prohibit or interrupt underground coal mining operations (section 720(a)(2) of SMCRA),

UCA 40–10–18(15)(e), adoption of rules within 1 year to implement UCA 40–10–18(15) (section 720(b) of SMCRA),

UCA 40–10–18.1, suspension of underground coal mining upon finding of immediate danger to inhabitants at the surface (section 516(c) of SMCRA), and

UCA 40–10–18.2, applicability of other chapter provisions (section 516(d) of SMCRA).

Because the proposed revisions to these previously-approved Utah statutes are nonsubstantive in nature, the Director finds that these proposed Utah statutes are no less stringent than SMCRA. The Director approves these proposed statutes.

2. Substantive Revisions to Utah's Statute That Are Substantively Identical to the Corresponding Provisions of SMCRA

Utah proposed revisions to UCA 40–10–25(6)(b), concerning remined lands eligible for AMLR expenditures, that are substantive in nature and contain language that is substantively identical to requirements in section 404 of SMCRA. Because the proposed Utah statute is substantively identical to the corresponding provision of SMCRA, the Director finds that it is no less stringent than SMCRA. The Director approves the proposed revisions to UCA 40–10–25(6)(b).

3. UCA 40–10–3(1), Definition of "Adjudicative Proceeding"

On July 19, 1995, OSM at 30 CFR 944.16(e) required Utah to revise its definition of "adjudicative proceeding" at UCA 40–10–3(1) to include judicial review of agency actions (finding No. 3, 60 FR 37002, 37004–37005).

In this amendment, Utah proposed to revise the definition of "adjudicative proceeding" at UCA 40–10–3(1) to recodifying existing UCA 40–10–3(1) as UCA 40–10–3(1)(a) and making minor, nonsubstantive, editorial revisions to it; and adding a new UCA 40–10–3(1)(b) so that "adjudicative proceeding", in part, means "judicial review of a division or board ((Division or Board of Oil, Gas and Mining)) action or proceeding specified in Subsection (a)".

The Director finds that the proposed definition of "adjudicative proceeding" at UCA 40–10–3(1)(b) is consistent with: the definition of the same term at UCA 63–46b–2(1)(a), as clarified at UCA 63–46b–1, of the Utah Administrative Procedures Act (UAPA); the definition of the same term in the rules at Utah Administrative Rule (Utah Admin. R) 641–100–200 implementing UAPA; and UCA 40–10–30(1), which provides for the judicial review of the Division's and Board's adjudicative proceedings.

The Director approves the proposed revisions to the definition of "adjudicative proceeding" at UCA 40–10–3 (1), (1) (a) and (b) and removes the required amendment at 30 CFR 944.16(e).

4. UCA 40–10–11(3), Review of Applicant Violations Prior to Permit Issuance

In the July 19, 1995, **Federal Register** (finding No. 7, 60 FR 37002, 37006), OSM placed two required amendments on the Utah program. At 30 CFR 944.16(f), OSM required Utah to revise UCA 40–10–11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

In response to the required amendment at 30 CFR 944.16(f)(1), Utah proposed to add the phrase "the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations" to the first sentence of UCA 40–10–11(3). As proposed, the sentence requires permit applicants to file a schedule listing any and all notices of violation of "the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations", this chapter (UCA 40–10), any State or Federal program or law approved under SMCRA, and any law, rule, or regulation of the United States or Utah pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the 3-year period prior to the date of application. The Director finds that the proposed addition of the phrase "the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations" makes the first sentence of UCA 40–10–11(3) no less stringent than the corresponding requirement of section 510(c) of SMCRA and satisfies the required amendment at 30 CFR 944.16(f)(1). Therefore, the Director approves this revision to UCA 40–10–11(3) and removes the required amendment at 30 CFR 944.16(f)(1).

Utah also proposed in the third sentence of UCA 40–10–11(3) to (1) make a substantive revision by adding the phrase "and regulation" and (2) make a clarifying nonsubstantive revision by referring to "this Subsection (3)" instead of "this Subsection". As proposed, the sentence requires that a permit not be issued if the schedule or other information available to the Division indicates that any surface coal mining operation owned or controlled by the applicant is in violation of this chapter (UCA 40–10) or the laws "and regulations" referred to in "this Subsection (3)" (UCA 40–10–11(3)). The substantive revision is consistent with the first sentence of UCA 40–10–11(3), which not only requires compliance with this chapter and various laws, but also various regulations. The corresponding requirement of section 510(c) of SMCRA is that a permit not be issued if the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is in violation of "this Act" (SMCRA) or such other laws referred to in section 510(c) of SMCRA. The reference to "this Act" in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations at 30 CFR Chapter VII, and all State and Federal programs approved under SMCRA (48 FR 44389, September 28, 1983, and 45 FR 82223, December 15, 1980). With the proposed addition of the phrase "and regulations", the third

sentence of UCA 40–10–11(3) requires compliance with the same laws and regulations as the corresponding requirement of section 510(c) of SMCRA. Therefore, the Director finds that the revised third sentence of UCA 40–10–11(3) is no less stringent than the corresponding requirement of section 510(c) of SMCRA. The Director approves the proposed revisions to UCA 40–10–11(3).

In this amendment, Utah did not, in response to the required amendment at 30 CFR 944.16(f)(2), propose to revise the second half of the third sentence of UCA 40–10–11(3) that still requires that no permit be issued if the applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of "this chapter" (UCA 40–10). As explained in the July 19, 1995, **Federal Register** (finding No. 7, 60 FR 37002, 37006), "this chapter" encompasses only violations of the State statute. It does not, as required by section 510(c) of SMCRA, encompass violations of SMCRA, the implementing Federal regulations, any State and Federal programs enacted under SMCRA, or other provisions of the approved Utah program. Because the second half of the third sentence of UCA 40–10–11(3) is still less stringent than section 510(c) of SMCRA, the Director lets stand the required amendment at 30 CFR 944.16(f)(2).

5. UCA 40–10–11(5)(a), Remining Operation Violations Resulting From Unanticipated Events or Conditions

In the July 19, 1995, **Federal Register** (finding No. 8, 60 FR 37002, 37006), OSM at 30 CFR 944.16(g) required Utah to revise UCA 40–10–11(5)(a) to reflect an effective date "after October 24, 1992".

In response to the required amendment, Utah proposed in this amendment at UCA 40–10–11(5)(a) that after October 24, rather than 14, 1992, the prohibition of UCA 40–10–11(3) for issuing permits does not apply to a permit application, if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application. The Director finds that the proposed date change makes UCA 40–10–11(5)(a) substantively identical to section 510(e) of SMCRA and satisfies the required amendment at 30 CFR 944.16(g). Therefore, the Director approves this proposed revision to UCA 40–10–11(5)(a) and removes the required amendment at 30 CFR 944.16(g).

6. UCA 40–10–13(2)(b), Location of Informal Conferences

In the July 19, 1995, **Federal Register** (finding No. 9, 60 FR 37002, 37006–37007), OSM at 30 CFR 944.16(h) required Utah to revise UCA 40–10–13(2)(b) to require that informal conferences for permits and permit revisions "shall", instead of "may", be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the Division.

In response to the required amendment at 30 CFR 944.16(h), Utah proposed to change "may" to "shall" in UCA 40–10–13(2)(b). Utah, at its own initiative, also proposed a nonsubstantive revision to previously approved language at UCA 40–10–13(2)(b). It proposed that the informal conference shall be conducted in accordance with the procedures described in "this Subsection (b)", instead of "Subsection (b)", irrespective of the requirements of section 63–46b–5, the Utah Administrative Procedures Act. In making this revision, Utah clarified that the reference is to UCA 40–10–13(2)(b) itself rather than another subsection of Utah's statute.

The Director finds that Utah's proposed revisions to USA 40–10–13(2)(b) are no less stringent than section 513(b) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–13(2)(b) and removes the required amendment at 30 CFR 944.16(h).

7. UCA 40–10–18(15)(c), Water Replacement by Operators of Underground Coal Mines

Utah proposed new UCA 40–10–18(15)(c) as follows:

> (c) Subject to the provisions of Section 40–10–29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

For the reasons discussed below, the Director finds that proposed UCA 40–10–18(15)(c) is no less stringent than sections 720(a)(2) and 717(a) of SMCRA. Therefore, the Director approves the proposed addition of UCA 40–10–18(15)(c).

a. The Phrase "Subject to the Provisions of Section 40–10–29"

In UCA 40–10–18(15)(c), Utah proposed water replacement provisions that are "Subject to the provisions of Section 40–10–29". In a January 29, 1997, letter to OSM (administrative record No. UT–1094), Utah clarified that the phrase "Subject to the provisions of Section UCA 40–10–29" was intended as a reference to subsection (1) of UCA 40–10–29.

UCA 40–10–29(1) states that "[n]othing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation." This requirement is substantively identical to section 717(a) of SMCRA.

Utah explained that the phrase "Subject to the provisions of Section 40–10–29" was included in UCA 40–10–18(15)(c) expressly at the request of Utah water users because they wanted to make it clear that the water replacement provisions of UCA 40–10–18 supplement, rather than replace, any common law or other statutory remedies otherwise available to them (administrative record No. UT–1094). Utah also stated that its own interpretation is that the underground mine water replacement requirements of proposed UCA 40–10–18(15)(c) are intended to supplement, not replace, any other remedies that may be available to water users.

On the basis of this rationale, the Director finds that the phrase "Subject to the provisions of Section 40–10–29" in proposed UCA 40–10–18(15)(c) is consistent with the requirements of sections 720(a)(2) and 717(a) of SMCRA.

b. Replacement of State-Appropriated Water

In UCA 40–10–18(15)(c), Utah proposed that "the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations" (emphasis added). This proposed provision is the same as the counterpart provision at section 720(a)(2) of SMCRA, except that the SMCRA provision protects "any drinking, domestic, or residential water supply from a well or spring" instead of "any state-appropriated water".

Utah explained that, under Utah water law, "a person or entity cannot be a 'legitimate' water user if he/she/it is using water that not has been appropriated by the State". Utah then went on to explain that "[t]he deliberately broad phrase 'any state-appropriated water' covers the universe of legal Utah water users * * *" (administrative record No. UT-1094).

OSM interprets sections 720(a)(2) and 717(a) of SMCRA to mean that the water replacement requirements of section 720(a)(2) do not supersede the deference provided by section 717 to State water law on matters of allocation and use. (*See* March 31, 1995, 60 FR 16722, 16733.) Utah's proposed phrase "any state-appropriated water" incorporates this concept of deferral to State water law provisions concerning allocation and use, as set forth in section 717(a) of SMCRA, while protecting drinking, domestic, or residential water supplies from wells or springs, as required by section 720(a)(2) of SMCRA.

Furthermore, the proposed term "any state-appropriated water" protects more types of water supplies than drinking, domestic, or residential water supplies from wells or springs. For instance, it protects agricultural, commercial, and industrial water supplies that are not used for direct human consumption, human sanitation, or domestic use. In this respect, proposed USA 40–10–18(15)(c) is more stringent than section 720(a)(2) of SMCRA.

For these reasons, the Director finds that the proposed requirements in UCA 40–10–18(15)(c) that "the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations" are no less stringent than the requirements of sections 720(a)(2) and. 717(a) of SMCRA.

8. UCA 40–10–20(2)(e)(ii), Contest of Violation or Amount of Civil Penalty

In the September 27, 1994, **Federal Register**, the Director deferred decision on a proposed revision to UCA 40–10–20(2) (finding No. 5, 59 FR 49185, 49187). Subsequently, in the July 19, 1995, **Federal Register** (finding No. 13, 60 FR 37002, 37008), OSM placed a required amendment on the revised version of the same section of the Utah program. At 30 CFR 944.16(i), OSM required Utah to revise UCA 40–10–20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of the operator's receipt of the results of the informal conference.

In response to the Director's decision deferral and the required amendment at 30 CFR 944.16(i), Utah proposed to add the phrases "fact of the" and "amount of the civil penalty assessed for the" to UCA 40–10–20(2)(e)(ii). The proposed provision requires that if the operator fails to forward the amount of the civil penalty to the Division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the "fact of the" violation or to contest the "amount of the civil penalty assessment for the" violation.

The Director finds that the proposed addition of the phrases "fact of the" and "amount of the civil penalty assessed for the" make UCA 40–10–20(2)(e)(ii) no less stringent than the counterpart requirements of section 518(c) of SMCRA.

Utah's proposed revisions to the civil penalty procedures at UCA 40–10–20–(2)(e)(ii) address the issues raised in the Director's September 27, 1994, decision deferral and satisfy the required amendment at 30 CFR 944.16(i). Therefore, the Director approves the proposed revisions to UCA 40–10–20(2)(e)(ii) and removes the required amendment at 30 CFR 944.16(i).

IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

In response to OSM's invitation for public comments, the Utah Mining Association responded on June 25, 1997, that it supported the proposed amendment and encouraged OSM to approve it (administrative record No. UT–1096). It stated that it was heavily involved in the drafting the two pieces of legislation that comprise the amendment. The mining association indicated that it had worked closely with water users on the legislation language and had worked with the State Engineer to ensure that the legislation adequately protected water rights.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), 884,15(a), and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program and plan.

The U.S. Fish and Wildlife Service, Utah Field Office, responded on July 7, 1997, that it had received the proposed amendment but had no comments on it (administrative record No. UT–1097).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendments that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Ct (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–1091). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–1091). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approved Utah's proposed amendment as submitted on May 27, 1997.

The Director approves, as discussed in:

Finding No. 1, revisions to UCA 40–10–17 (2) (j)(ii)(B), (p) (ii) and (iii), (3) (a) and (c), and (4), (4) (a) and (d), performance standards for all coal mining and reclamation operations, and approximate original contour variances for surface coal mining operations; UCA 40–10–18(1), adoption of rules for control of surface effects of underground coal mining operations; UCA 40–10–18(2), requirements for underground coal mining permits; UCA 40–10–18(3) (a), (a) (i) through (iii), and (b), prevention of subsidence effects; UCA 40–10–18(4), sealing of portals, entryways, drifts, shafts, or other openings; UCA 40–10–18(5), filling or sealing of exploratory holes and return of mine waste to mine workings or excavations; UCA 40–10–18(6) (a), (b), and (b) (i) through (iii), surface disposal of mine waste; UCA 40–10–18(7), dams or embankments constructed of coal mine waste; UCA 40–10–18 (8), (8) (a) and (b), revegetation; UCA 40–10–18(9), protection of offsite areas from damage; UCA 40–10–18(10), elimination of fire hazards and public health and safety hazards; UCA 40–10–18 (11), (11)(a), and (11)(a) (i) through (iii), minimization of disturbances of the prevailing hydrologic balance; UCA 40–10–18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement; UCA

40–10–18(12) (a), (a) (i) through (iii), and (b), applicability of UCA 40–10–17 for roads, structures, and facilities, and accommodation in requirements to take into account the distinct differences between surface and underground coal mining methods; UCA 40–10–18(13), minimization of adverse impacts to fish, wildlife, and related environmental values; UCA 40–10–18(14), prevention of acid mine drainages; UCA 40–10–18(15)(a), requirements for underground coal mining operations conducted after October 24, 1992; UCA 40–10–18(15)(b) (i) through (iv), repair or compensation for damage caused by subsidence to occupied residential dwellings, related structures, and noncommercial buildings; UCA 40–10–18(15)(d), nothing to be construed in UCA 40–10–18(15) to prohibit or interrupt underground coal mining operations; UCA 40–10–18(15)(e), adoption of rules within 1 year to implement UCA 40–10–18(15); UCA 40–10–18.1, suspension of underground coal mining upon finding of immediate danger to inhabitants at the surface; and UCA 40–10–18.2, applicability of other chapter provisions;

Finding No. 2, revisions to UCA 40–10–25(6)(b), remined lands eligible for AMLR expenditures;

Finding No. 3, revisions to UCA 40–10–3 (1), (1) (a) and (b), definition of "adjudicative proceeding";

Finding No. 4, revisions to UCA 40–10–11(3), review of applicant violations prior to permit issuance;

Finding No. 5, revisions to UCA 40–10–11(5)(a), remining operation violations resulting from unanticipated events or conditions;

Finding No. 6, revisions to UCA 40–10–13(2)(b), location of informal conferences;

Finding No. 7, revisions to UCA 40–10–18(15)(c), water replacement by operators of underground coal mines; and

Finding No. 8, revisions to UCA 40–10–20(2)(e)(ii), contest of violation or amount of civil penalty.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program and plan amendment process and to encourage States to bring their programs and plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs, State AMLR plans, and program and plan amendments since each such program, plan, and amendment is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittals are consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. Under Title IV SMCRA (30 U.S.C. 1231–1243), decisions on proposed State AMLR plans and plan amendments must be based on a determination of whether the submittals meet the requirements of the implementing Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

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

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

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine reclamation programs.

Dated: July 23, 1997.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

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

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

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

2. Section 944.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 27, 1997	August 4, 1997	Definition of "adjudicative proceeding" at UCA 40–10–3(1), (a), (b); 40–10–11 (3), (5)(a); 40–10–13(2)(b); 40–10–17 (2) (j) (ii) (B), (p) (ii), (iii), (3) (a), (c), (4), (a), (d); 40–10–18 (1), (2), (3)(a), (i) through (iii), (b), (4), (5), (6) (a), (b), (i) through (iii), (7), (8), (a), (b), (9), (10), (11), (a), (i) through (iii), (b), (c), (12)(a), (i) through (iii), (b), (13), (14), (15)(a), (b) (i) through (iv), (c), (d), (e); 40–10–18.1, .2, 40–10–20(2)(e)(ii).

3. Section 944.16 is amended by removing and reserving paragraphs (e) and (f)(1) and removing paragraphs (g), (h), and (i).

4. Section 944.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 944.25 Approval of Utah abandoned mine land reclamation plan.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 27, 1997	August 4, 1997	UCA 40–10–25(6)(b).

[FR Doc. 97–20401 Filed 8–1–97; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Additional Designations and Removal of Two Individuals

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendices A and B to 31 CFR chapter V the names of 7 individuals and 7 entities who have been determined to be owned or controlled by, or to act for or on behalf of, other specially designated narcotics traffickers. Two individuals previously designated as specially designated narcotics traffickers are being removed from the appendices. In addition, identifying information is corrected for two specially designated nationals of Iraq.

EFFECTIVE DATE: July 30, 1997.

FOR FURTHER INFORMATION: Contact the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") (62 FR 34934, June 27, 1997). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), and the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, 7 additional Colombian entities and 7 additional Colombian individuals are added to the appendices as persons who have been determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). Any property subject to the jurisdiction of the United States in which an SDNT has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDNT has an interest.

The names of two individuals previously designated as SDNTs are being removed because they no longer meet the applicable criteria for designation. All real and personal property of these individuals, including all accounts in which they have any interest, are unblocked; and all transactions involving U.S. persons and these individuals are permissible.

In addition, an address now listed for two "Specially Designated Nationals" ("SDNs") of Iraq is being removed from appendices A and B.

Designations of foreign persons blocked pursuant to the Order are

effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the Federal Register, or upon prior actual notice.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 3 U.S.C. 301; 50 U.S.C. 1601–1651 and 1701–1706; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, with respect to the SDNTs, and (2) 3 U.S.C. 301; 22 U.S.C. 287c; 50 U.S.C. 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 101-513, 104 Stat. 2047-2055 (50 U.S.C. 1701 note); Pub. L. 104-132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317, with respect to the SDNs of Iraq, appendices A and B to 31 CFR chapter V are amended as set forth below:

1. Appendices A and B to 31 CFR chapter V are amended by adding the following names inserted in alphabetical order (1) in appendix A, section I, and (2) under the heading "Colombia" in appendix B:

AVILA MIRANDA, Jorge A., Calle 52N No. 2D–29, Cali, Colombia; c/o CAUCALITO LTDA., Cali, Colombia; (Cedula No. 12534286 (Colombia)) (individual) [SDNT]

BARRENEQUE GOMEZ, Jairo, (a.k.a. BARRENECHE GOMEZ, Jairo), c/o CAUCALITO LTDA., Cali, Colombia; (Cedula No. 70112547 (Colombia)) (individual) [SDNT]

CAMACHO RIOS, Jaime, c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; (Cedula No. 14950781 (Colombia)) (individual) [SDNT]

CAUCALITO LTDA., (f.k.a. GANADERA LTDA.), (f.k.a. GANADERIA), Apartado Aereo 10077, Cali, Colombia; Carrera 4 No. 12–41 of. 1403, Edificio Seguros Bolivar, Cali, Colombia; NIT # 800029160–9 [SDNT]

CONSTRUCCIONES ASTRO S.A., (f.k.a. SOCIEDAD CONSTRUCTORA LA CASCADA S.A.), (f.k.a. CONSTRUCTORA CASCADA), Apartado Aereo 10077, Cali, Colombia; Calle 1A 62A–120, Cali, Colombia; Calle 1A 62A–120 B2 108, Cali, Colombia; Calle 1A 62A–120 2305, Cali, Colombia; Calle 1A 62A–120 2418, Cali, Colombia; Calle 1A 62A–120 4114, Cali, Colombia; Calle 1A 62A–120 6245, Cali, Colombia; Calle 13 3–22 piso 12 y piso 14, Cali, Colombia; Carrera 4 No. 12–41 of. 1401, Cali, Colombia; Carrera 4 No. 12–41 of. 1402, Edificio Seguros Bolivar, Cali, Colombia; Carrera 4 No. 12–41 of. 1403, Cali, Colombia; Carrera 64 1C–63, Cali, Colombia; Carrera 64 1B–83, Cali, Colombia; NIT # 890307311–4 [SDNT]

CRIADERO DE POLLOS EL ROSAL S.A., (f.k.a. INDUSTRIA AVICOLA PALMASECA S.A.), Carrera 61 No. 11–58, Cali, Colombia; Carretera Central via Aeropuerto Palmaseca, Colombia; NIT # 800146749–7 [SDNT]

GONZALEZ, Maria Lorena, c/o INVERSIONES Y CONSTRUCCIONES ATLAS LTDA., Cali, Colombia; (Cedula No. 31992548 (Colombia)) (individual) [SDNT]

INVERSIONES Y CONSTRUCCIONES ATLAS LTDA., (f.k.a. INVERSIONES MOMPAX LTDA.), (f.k.a. MOMPAX LTDA.), Calle 10 No. 4–47 piso 19, Cali, Colombia; NIT # 800102408–1 [SDNT]

JIMENEZ, Isabel Cristina, c/o INVERSIONES Y CONSTRUCCIONES ATLAS LTDA., Cali, Colombia; (Cedula No. 66852533 (Colombia)) (individual) [SDNT]

MIRALUNA LTDA. Y CIA. S. EN C.S., (f.k.a. INVERSIONES EL PASO LTDA.), (f.k.a. INVERSIONES NEGOAGRICOLA S.A.), Carrera 4 No. 12–41 of. 1403, Cali, Colombia; Carrera 4 No. 12–41 of. 1501, Cali, Colombia; NIT # 890937860–9 [SDNT]

NEGOCIOS LOS SAUCES LTDA., (f.k.a. SAMARIA LTDA.), Apartado Aereo 10077, Cali, Colombia; Carrera 4 No. 4–21 of. 1501, Edificios Seguros Bolivar, Cali, Colombia; NIT # 890328835–1 [SDNT]

NEGOCIOS LOS SAUCES LTDA. Y CIA. S.C.S., (f.k.a. INMOBILIARIA SAMARIA LTDA.), Calle 13 No. 3–32 piso 13, Cali, Colombia; Calle 13A No. 64–50 F102, Cali, Colombia; Calle 18 No. 106–96 of. 201/202, Cali, Colombia; Carrera 4 No. 12–41 of. 1501, Edificio Seguros Bolivar, Cali, Colombia; NIT # 890937859–0 [SDNT]

OCAMPO, Carlos, c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; (Cedula No. 6401478 (Colombia)) (individual) [SDNT]

RODAS, Luis Alberto, c/o CONSTRUCCIONES ASTRO S.A., Cali, Colombia; (Cedula No. 16630332 (Colombia)) (individual) [SDNT]

2. Appendices A and B to 31 CFR chapter V are amended by (1) removing the entries in the names "OSORIO PINEDA, Jorge Ivan," and "ZABALETA SANDOVAL, Nestor," from appendix A, section I; and (2) under the heading "Colombia" in appendix B, removing the entries in the names "OSORIO PINEDA, Jorge Ivan," and "ZABALETA SANDOVAL, Nestor."

3. Appendices A and B to 31 CFR chapter V are amended by:

(a) In appendix A, section I: (1) removing from the entry in the name "NAMAN, Saalim or Sam" the address "600 Grant Street, 42nd Floor, Pittsburgh, Pennsylvania, U.S.A."; and (2) removing the entry in the name "TIGRIS TRADING, INC., 600 Grant Street, 42nd Floor, Pittsburgh, Pennsylvania 15219, U.S.A. [IRAQ]"; and

(b) Under the heading "United States of America" in appendix B: (1) removing from the entry in the name "NAMAN, Saalim or Sam" the address "600 Grant Street, 42nd Floor, Pittsburgh, Pennsylvania, U.S.A."; and (2) removing the entry in the name "TIGRIS TRADING, INC., 600 Grant Street, 42nd Floor, Pittsburgh, Pennsylvania 15219, U.S.A. [IRAQ]".

Dated: July 22, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 25, 1997.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 97–20448 Filed 7–30–97; 11:07 am]

BILLING CODE 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations: Performance on Awards; Certain Legal Services

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Transactions Regulations to authorize by general license the payment of awards against Iran issued by the Iran-U.S. Claims Tribunal in The Hague, and implementation (other than certain exports and reexports) and payment of awards and settlements to which the United States Government is a party. This final rule also authorizes by general license the provision of certain legal services to the Government of Iran and persons in Iran.

EFFECTIVE DATE: July 30, 1997.

FOR FURTHER INFORMATION CONTACT: Regarding the issuance of licenses,

Steven I. Pinter, Chief, Licensing Division (tel.: 202/622–2480); regarding legal questions, William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/515–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. The Internet address for the Bulletin Board is fedbbs.access.gpo.gov, with the World Wide Web, Telnet, or FTP protocol. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document can also be downloaded in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

In Executive Order 12957 of March 15, 1995 (60 FR 14615, March 17, 1995), President Clinton declared a national emergency with respect to the actions and policies of the Government of Iran and imposed sanctions against Iran supplementing those imposed in 1987, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701–06 ("IEEPA"). The President substantially supplemented and amended those sanctions in Executive Order 12959 of May 6, 1995 (60 FR 24757, May 9, 1995). The Office of Foreign Assets Control ("OFAC") amended the Iranian Transactions Regulations in September 1995 (the "Regulations") (60 FR 47061, September 11, 1995), to implement these orders.

In further implementation of Executive Orders 12957 and 12959, OFAC is promulgating amendments to the Regulations in subpart E. Section 560.510(d)(1) and (d)(2) are revised to generally license all payments of awards against Iran issued by the Iran-U.S. Claims Tribunal in The Hague, irrespective of the source of funds for payment, and to generally license implementation (except exports or reexports that are subject to export license application requirements of Federal agencies other than OFAC) as well as payment of awards or settlements in cases to which the United States Government is a party.

Section 560.525(a)(3) is revised to generally license the provision of legal services to initiate and conduct U.S. court and other domestic legal proceedings on behalf of persons in Iran or the Government of Iran notwithstanding the prohibition on exportation of services to Iran.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. The amendment in this final rule does not impose a paperwork burden.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR part 560 is revised as follows:

PART 560–IRANIAN TRANSACTIONS REGULATIONS

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

Authority: 3 U.S.C. 301; 22 U.S.C. 2349aa–9; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 100 Stat. 1214, 1254 (18 U.S.C. 2332d); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. The introductory text of paragraph (d) and paragraphs (d)(1) and (d)(2) of § 560.510 are revised to read as follows:

§ 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.

* * * * *

(d) The following are authorized:

(1) All transactions related to payment of awards of the Iran-United States Claims Tribunal in The Hague against Iran.

(2) All transactions necessary to the payment and implementation of awards (other than exports or reexports subject to export license application requirements of other agencies of the United States Government) in a legal proceeding to which the United States Government is a party, or to payments pursuant to settlement agreements entered into by the United States Government in such a legal proceeding.

3. Paragraphs (a)(3) and (a)(5)(i) of § 560.525 are revised to read as follows:

§ 560.525 Exportation of certain legal services.

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment of professional fees and reimbursement of incurred expenses, are authorized:

(1) * * *

(2) * * *

(3) Initiation and conduct of domestic United States legal, arbitration, or administrative proceedings on behalf of the Government of Iran or a person in Iran;

(4) * * *

(5) * * *

(i) To resolve disputes between the Government of Iran or an Iranian national and the United States or a United States national;

* * * * *

Dated: July 23, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 25, 1997.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 97–20447 Filed 7–30–97; 11:07 am]

BILLING CODE 4810–25–F

POSTAL SERVICE

39 CFR Part 3

Amendments to Bylaws of the Board of Governors Concerning Plans and Reports Under the Government Performance and Review Act

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved amendments to its bylaws. The amendments reserve to the Board approval of Postal Service plans and reports under the Government Performance and Review Act and reserve to the Governors the transmission of semi-annual reports under the Inspector General Act.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Postal Service consists of nine Presidentially appointed Governors, and the Postmaster General and Deputy Postmaster General. 39 U.S.C. 202. The bylaws of the Board list certain matters reserved for action by the Board and certain other matters reserved for action by the Governors alone. 39 CFR 3.3, 3.4. At its meeting on July 1, 1997, the Board approved two conforming amendments to these bylaws.

One amendment concerns 39 U.S.C. 2801–2805, as enacted by the Government Performance and Results Act. The Board amended § 3.3 of the bylaws to insert a new paragraph (v), reserving to the Board the approval and transmittal to the President and the Congress of the plans and reports which will be required to be submitted periodically under the Results Act. These are the strategic plans required by 39 U.S.C. 2802, the performance plans required by 39 U.S.C. 2803, and the program performance reports required by 39 U.S.C. 2804. The performance plans and program performance reports are required by the statute to be included in the annual comprehensive statement required under 39 U.S.C. 2401(e), which is already reserved for approval and transmittal by the Board under bylaw section 3.3(t).

The second amendment added to § 3.4 a new paragraph (h), which reserves to the Governors the transmittal to the Congress of the semi-annual report of the Inspector General required under section 5 of the Inspector General Act, as amended. 5 U.S.C. app. The Inspector General Act requires the reports to be transmitted by the head of the agency. Under section 8G of the Inspector General Act, as amended by Public Law 104–208 (1997), the Governors function as the head of the Postal Service with respect to the Inspector General Act.

List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

Accordingly, 39 CFR Part 3 is amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3 is amended to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 1003, 2802–2804, 3013; 5 U.S.C. 552b (g), (j); Inspector General Act, 5 U.S.C. app.

2. Section 3.3 is amended by republishing the introductory text; redesignating paragraph (v) as paragraph (w); and by adding new paragraph (v) to read as follows:

§ 3.3 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

* * * * *

(v) Approval and transmittal to the President and the Congress of the Postal Service's strategic plan pursuant to the Government Performance and Results Act of 1993, 39 U.S.C. 2802; approval of the Postal Service annual performance plan under 39 U.S.C. 2803 and the Postal Service program performance report under 39 U.S.C. 2804, which are included in the comprehensive statement under 39 U.S.C. 2401.

3. Section 3.4 is amended by republishing the introductory text and adding new paragraph (h) at the end of that section to read as follows:

§ 3.4 Matters reserved for decision by the Governors.

The following matters are reserved for decision by the Governors:

* * * * *

(h) Transmittal to the Congress of the semi-annual report of the Inspector General under section 5 of the Inspector General Act.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–20404 Filed 8–1–97; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD040–4014a and MD047–4014a; FRL–5867–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Degreasing Operations and Vehicle Refinishing, and Definition of Motor Vehicle

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland on July 12, 1995 and July 17, 1995. These revisions establish volatile organic compound emission reduction requirements for degreasing operations and vehicle refinishing throughout the State of Maryland, and a definition for the term "motor vehicle." The intended effect of this action is to approve these amendments to the Maryland SIP, in accordance with the SIP submittal and revision provisions of the Act.

DATES: This final rule is effective September 18, 1997 unless within September 3, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

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 July 12, 1995, the Maryland Department of the Environment (MDE) submitted new and revised regulations to EPA as State Implementation Plan (SIP) revisions.

These regulations control emissions of volatile organic compounds (VOCs) throughout the state. MDE submitted these SIP revision requests pursuant to the rate-of-progress (ROP) requirements of section 182 of the Clean Air Act (the Act). Specifically, Maryland has adopted VOC control measures for degreasing operations and vehicle refinishing. In addition, on July 17, 1995, MDE submitted a new definition for the term "motor vehicle" to EPA as a SIP revision.

Background

Section 182(b)(1) of the Act requires states with ozone nonattainment areas classified as moderate or above to reduce VOC emissions 15% from 1990 baseline levels. States were required to achieve the 15% VOC emission reduction by 1996. This ROP requirement, known as the 15% plan, was due to EPA as a SIP revision by November 15, 1993.

In Maryland, 15% plans were required for the Baltimore severe ozone nonattainment area, the Maryland portion of the Philadelphia severe ozone nonattainment area, and the Maryland portion of the Washington, DC serious ozone nonattainment area. Maryland submitted the required 15% plans to EPA as SIP revisions on July 12, 1995. In these 15% plans, Maryland takes credit for the emission reductions achieved through the VOC regulations that Maryland submitted as SIP revisions on July 12, 1995, including Maryland's autobody refinishing and degreasing regulations. Furthermore, the VOC emission reductions achieved by Maryland's autobody refinishing and degreasing regulations are needed to achieve the 15% reduction in the Baltimore plan. Therefore, these two regulations, which control VOC emissions from autobody refinishing and degreasing operations, must be approved into Maryland's SIP before EPA can approve the Baltimore 15% plan.

Summary of SIP Revisions

Control of VOC Emissions From Cold and Vapor Degreasing (COMAR 26.11.19.09)

This revision established standards for cold and vapor degreasing operations. Maryland has repealed its existing degreasing provisions, COMAR 26.11.19.09 Volatile Organic Compound Metal Cleaning, and replaced them with these new provisions, COMAR 26.11.19.09 Control of VOC Emissions from Cold and Vapor Degreasing.

General Provisions

The new regulation applies to a person who uses a VOC degreasing material in cold or vapor degreasing at service stations, motor vehicle repair shops, automobile dealerships, machine shops, and any other metal refinishing, cleaning, repair or fabrication facilities.

Monthly records of the amount of VOC degreasing material used must be maintained and made available to MDE for inspection upon request.

This regulation established definitions for the following terms: cold degreasing, degreasing material, grease, halogenated substance, vapor degreasing, and VOC degreasing material.

Requirements for Cold Degreasers

After May 15, 1996, a person may not use any VOC degreasing material that has a vapor pressure greater than 1 millimeter of mercury (mm Hg) at 20° C (0.038 pounds per square inch (psi)). The use of any halogenated substance that is a VOC is prohibited. The use of good operating practices is required.

Requirements for Vapor Degreasers

The use of VOC degreasing material is prohibited, unless the vapor degreaser is equipped with a condenser or a pollution control device with an overall efficiency of at least 90%. Vapor degreasers must include separate enclosed chambers that allow drainage of parts being cleaned, capture of the vapors, or other methods to minimize evaporative losses.

EPA Evaluation: The requirement to use material with vapor pressure less than or equal to 1 mm HG for cold degreasing, and the prohibition of VOC degreasing materials for vapor degreasing, unless add-on control with 90% overall control efficiency is used, will result in significant VOC emission reductions. The requirement for good operating practices will also contribute to VOC emission reductions from this source category. Furthermore, Maryland's recordkeeping, reporting, and testing provisions ensure that this regulation is enforceable. Therefore, this regulation is fully approvable. These reductions are needed for Maryland's 15% plans.

Control of VOC Emissions From Vehicle Refinishing (COMAR 26.11.19.23)

General Provisions

This new regulation establishes standards for vehicle refinishing based on VOC content of coatings, as applied. This regulation establishes definitions for the following terms: base coat/clear coat system, controlled air spray system, mobile equipment, multistage coating equipment, precoat, pretreatment, primer sealer, primer surfacer, specialty coating, topcoat, and vehicle refinishing. This regulation is applicable to anyone using coatings that contain VOC for vehicle refinishing, except for a person who coats parts (1) if the parts are not components of a vehicle at the premises where vehicle refinishing is being performed or (2) at an automobile assembly plant.

Emission Standards

The following coating standards apply to the coating as used at the coating equipment, where lb/gal is pounds per gallon and kg/l is kilograms per liter.

Coating type	Maximum VOC content on or after April 15, 1996
Pretreatment	6.5 lb/gal (0.78 kg/l).
Precoat	5.5 lb/gal (0.66 kg/l).
Primer surfacer	5.8 lb/gal (0.46 kg/l).
Primer sealer	4.6 lb/gal (0.55 kg/l).
Topcoat	5.0 lb/gal (0.60 kg/l).
Multi-stage coating system.	5.2 lb/gal (0.63 kg/l).
Specialty coating	7.0 lb/gal (0.84 kg/l).

Compliance Standards

The regulation establishes methods for calculating the VOC content of a coating system, to determine compliance with the standards listed above.

The use of speciality coatings is limited to 5% by volume of all coatings used at a premises, calculated on a monthly basis.

The use of a controlled air spray system is required. Maryland defines controlled air spray systems as either high volume, low pressure (HVLP) or low volume, low pressure (LVLP) systems. The equipment must be operated in accordance with the equipment manufacturers' recommendations and in a manner that minimizes emissions of VOC to the atmosphere.

Cleanup and housekeeping provisions require that surface preparation and cleanup materials containing VOC, and VOC-contaminated cloth and paper must be stored in closed containers. Enclosed containers or VOC-recycling equipment must be used to clean paint guns and paint lines. The VOC content of preparation materials is limited to 6.5 lb/gal for plastic parts preparation and 1.4 lb/gal for all other preparation.

Monthly records of the total volume and VOC content of all coatings purchased (for which standards are specified in this regulation), cleanup materials and surface preparation materials must be maintained for at least

2 years and made available to MDE for inspection upon request.

EPA Evaluation: The coating standards in Maryland's autobody refinishing regulation limit the content of VOC in coatings, thereby reducing VOC emissions from the application of these coatings. In addition, limits on the use of speciality coatings; limits on the VOC content of surface preparation materials; clean-up and "housekeeping" provisions; and the requirement to use a controlled air spray system will further reduce emissions from this source category. Finally, Maryland's recordkeeping, reporting, and testing provisions ensure that this regulation is enforceable. Therefore, this regulation, which will achieve significant VOC emission reductions from the autobody refinishers in Maryland, is fully approvable. These reductions are needed for Maryland's 15% plans.

Definition of the Term "Motor Vehicle" (COMAR 26.11.01.01B(20–I) and 26.11.24.01B(9–I))

These new provisions establish a definition for the term "motor vehicle" in Maryland's general definitions, COMAR 26.11.01.01B, and in Maryland's stage II vapor recovery regulation, COMAR 26.11.24. Maryland has defined the term "motor vehicle" as "a vehicle registered with the Maryland Motor Vehicle Administration or the equivalent agency of another state."

EPA Evaluation: These new provisions serve to strengthen Maryland's stage II vapor recovery regulation by clarifying the applicability and exemptions of that regulation. Because this added definition will clarify a regulation in Maryland's SIP, it is approvable.

EPA is approving these SIP revisions 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 revisions should adverse or critical comments be filed. This action will be effective September 18, 1997 unless, by September 3, 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 then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1997.

Final Action

EPA is approving revisions to the Maryland SIP to establish VOC control requirements for autobody refinishing and degreasing operations. These regulations achieve fully enforceable VOC emission reductions. EPA is also approving a definition for the term "motor vehicle" as an addition to the Maryland SIP.

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.

Administrative Requirements

A. Executive Order 12866

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 State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the 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).

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 proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new 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, pertaining to revisions to the Maryland SIP establishing a definition for the term "motor vehicle" and establishing VOC control requirements for autobody refinishing and degreasing operations, must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1997. Filing a petition for reconsideration by the Regional 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: July 22, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(122), (123), and (124) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(122) Revisions to the Maryland State Implementation Plan submitted on July 17, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 17, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Addition of new COMAR 26.11.01.01B(20-I) and new COMAR 26.11.24.01B(9–I), definition of the term "motor vehicle," adopted by the Secretary of the Environment on April 7, 1995, and effective on May 8, 1995.

(ii) Additional material.

(A) Remainder of July 17, 1995 Maryland State submittal pertaining to COMAR 26.11.01.01B(20-I) and COMAR 26.11.24.01B(9-I), definition of the term "motor vehicle."

(123) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Deletion of old COMAR 26.11.19.09 Volatile Organic Compound Metal Cleaning (entire regulation).

(C) Addition of new COMAR 26.11.19.09 Control of VOC Emissions from Cold and Vapor Degreasing, adopted by the Secretary of the Environment on May 12, 1995, and effective on June 5, 1995, including the following:

(*1*) Addition of new COMAR 26.11.19.09.A Definitions.

(*2*) Addition of new COMAR 26.11.19.09.B Terms Defined, including definitions for the terms "cold degreasing," "degreasing material," "grease," "halogenated substance," "vapor degreasing," and "VOC degreasing material."

(*3*) Addition of new COMAR 26.11.19.09.C Applicability.

(*4*) Addition of new COMAR 26.11.19.09.D Requirements.

(*5*) Addition of new COMAR 26.11.19.09.E Specifications for Cold Degreasing and Requirements for Vapor Degreasing.

(*6*) Addition of new COMAR 26.11.19.09.F. Records.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.09 Control of VOC Emissions from Cold and Vapor Degreasing.

(124) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Addition of new COMAR 26.11.19.23 Control of VOC Emissions from Vehicle Refinishing, adopted by the Secretary of the Environment on May 1, 1995, and effective on May 22, 1995, including the following:

(*1*) Addition of new COMAR 26.11.19.23A Definitions, including definitions for the terms "base coat/clear coat system," "controlled air spray system," "mobile equipment," "multistage coating equipment," "precoat," "pretreatment," "primer sealer," "primer surfacer," "specialty coating," "topcoat," and "vehicle refinishing."

(*2*) Addition of new COMAR 26.11.19.23B. Applicability and Exemptions.

(*3*) Addition of new COMAR 26.11.19.23C. Coating Standards and General Conditions.

(*4*) Addition of new COMAR 26.11.19.23D. Calculations.

(*5*) Addition of new COMAR 26.11.19.23E. Requirements for Specialty Coatings.

(*6*) Addition of new COMAR 26.11.19.23F. Coating Application Equipment Requirements.

(*7*) Addition of new COMAR 26.11.19.23G. Cleanup and Surface Preparation Requirements

(*8*) Addition of new COMAR 26.11.19.23H. Monitoring and Records.

(ii) Additional material.

(A) Remainder of July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.23 Vehicle Refinishing.

[FR Doc. 97–20471 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 69–0012; FRL–5867–9]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part the final *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* (May 1997) (microscale plan) submitted by the Arizona Department of Environmental Quality on May 7, 1997. The microscale plan evaluates attainment of the 24-hour particulate matter (PM–10) national ambient air quality standard at four monitoring locations in the Maricopa County (Phoenix), Arizona, PM–10 nonattainment area. EPA is approving the attainment and reasonable further progress demonstrations for two of these sites (Salt River and Maryvale) and disapproving them for two other sites (West Chandler and Gilbert). EPA is also approving the reasonably available control measure/best available control measure demonstrations in the microscale plan for some significant source categories of PM–10 but disapproving them for others.

EFFECTIVE DATE: September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning

(AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Portions of Maricopa County are designated nonattainment for the PM–10 national ambient air quality standards (NAAQS)[1] and were originally classified as "moderate" pursuant to section 188(a) of the Clean Air Act (CAA or Act). 56 FR 11101 (March 15, 1991). The State of Arizona developed and submitted to EPA a PM–10 State Implementation Plan (SIP) revision intended to address the CAA requirements for moderate PM–10 nonattainment areas. These moderate area requirements are described in the notice of proposed rulemaking for this action (henceforth "the proposal"). 62 FR 31026 (June 6, 1997). EPA approved this SIP revision on April 10, 1995. 59 FR 38402. This approval was subsequently vacated by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996). In vacating EPA's approval of the plan, the court found that the State had failed to address the 24-hour PM–10 standard in its moderate area plan and ordered EPA to require the State to submit moderate area reasonably available control measure (RACM), attainment and reasonable further progress (RFP) demonstrations for that standard. 84 F.d. at 311.

Just before the court issued its order, EPA found that the Maricopa area failed to attain the PM–10 standards by the statutory deadline for moderate areas of December 31, 1994. See 61 FR 21372 (May 10, 1996). As a result, the area was reclassified to "serious." The State is now required to develop and submit a new PM–10 plan meeting the CAA requirements for serious PM–10 nonattainment areas by December 10, 1997. Statutory requirements for serious area PM–10 requirements are described in the proposal at 62 FR 31026–31027.

In order to comply with the court's order without diverting resources from the serious area plan effort, EPA, in consultation with the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Environmental Services Department (MCESD), decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan, but would split that planning effort into two related parts. Accordingly, EPA required submittal of a limited, locally-targeted plan (known as the microscale plan) meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the court and the serious area planning requirements for both standards.

The submittal deadlines and requirements applicable to the microscale plan are contained in letters dated September 18, 1996 and March 5, 1997 from Felicia Marcus, Regional Administrator, EPA Region IX, to Russell Rhoades, Director, ADEQ (Marcus letter). In brief, the microscale plan was to address the 24-hour standard violations at five specific monitors in the metropolitan Phoenix area and meet the statutory RACM, best available control measures (BACM), attainment, and RFP requirements for moderate and serious PM–10 areas. Finally, the plan was to contain the air quality modeling and emissions inventory information necessary to support the required demonstrations and meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l); necessary assurances that the implementing agencies have adequate personnel, funding and authority required by CAA section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111. A complete discussion of the EPA's rationale and requirements for the microscale plan can be found in the proposal at 62 FR 31027–31029.

II. Summary of the Proposal

ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) (plan or microscale plan) to EPA on May 9, 1997. EPA proposed to approve in part and disapprove in part this plan on June 6, 1997 (62 FR 31025). EPA's evaluation of the microscale plan and its proposed action on that plan are summarized here; a complete discussion can be found in the proposal and in the technical support document (TSD) for this rulemaking.

The microscale plan addresses exceedances of the 24-hour PM–10 NAAQS at the Salt River, Maryvale, Gilbert, and West Chandler PM–10 monitoring sites in the metropolitan Phoenix area.[2] The plan showed that 24-hour exceedances at the Salt River site were primarily due to fugitive dust from earth moving, industrial haul roads, unpaved parking lots, and unpaved roads; at the Maryvale site, from disturbed cleared area; at the Gilbert site from agricultural field aprons and unpaved parking lots; and at the West Chandler site, from agricultural fields, agricultural field aprons, vacant lots, and disturbed cleared areas. Plan, pp. 17–19 and 62 FR 31031–31032. The plan addressed attainment at these localized sites by identifying RACM and BACM appropriate for controlling these types of fugitive dust sources. However, the localized nature of the microscale plan precluded a determination regarding the extent to which the identified RACM and BACM should be implemented to address emissions over a larger geographic area, as well as an assessment of the overall effectiveness of these measures when applied throughout the nonattainment area as a whole. These determinations will be addressed by the State in the full regional plan. Plan, pp. 21–22 and 62 FR 31031–31032.

In Maricopa County, most fugitive dust sources are subject to MCESD's Rule 310 (Open Sources of Fugitive Dust). MCESD committed in the microscale plan to a number of improvements to the implementation of Rule 310. These improvements are described in the plan (pp. 32–36) and discussed in EPA's proposed action on the plan, 62 FR 31032–31034. These improvements were primarily targeted at sources subject to permitting (such as, earth moving, disturbed cleared roads, and industrial haul roads) under MCESD's rules. For non-permitted sources (such as vacant lots, agricultural sources, unpaved parking lots, and unpaved roads), the microscale plan did not provide for proactive implementation of controls. 62 FR 31034. In total, the plan contained sufficient controls to show attainment at the Salt River and Maryvale sites but also showed that additional controls were needed before attainment could be demonstrated at the West Chandler and Gilbert sites. Plan, pp. 37–40 and 62 FR 31025.

Based on its evaluation of the microscale plan, EPA proposed to approve the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving,

[1] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6.

[2] The fifth monitoring site, East Chandler, was dropped from the microscale plan because of a lack of sufficient inventory data to evaluate exceedances at that site. 62 FR 31029, ftn 10.

and industrial haul roads and disapprove the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads. EPA also proposed to approve the attainment and RFP demonstrations at the Salt River and Maryvale sites and disapprove these demonstrations at the West Chandler and Gilbert sites. Finally, EPA proposed to find that the plan met the the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l); necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111. 62 FR 31035–31036.

III. Response to Public Comments on the Proposal

EPA received comments on its proposal from the Arizona Center for Law in the Public Interest (ACLPI) and the Arizona Department of Environmental Quality. A summary of the most pertinent comments and EPA's responses to those comments follow. A complete summary of all the comments received and EPA's responses to those comments can be found in the TSD.

In its June 9, 1997 comment letter, ACLPI incorporated by reference its April 28, 1997 comments to ADEQ. EPA responds to both sets of comments below.

Comment: While ACLPI agrees with EPA's proposal to approve the various control measures in the microscale plan for inclusion in the SIP, it does not agree that these measures have been shown to constitute BACM for all the source categories addressed and notes that the State indicated in the draft microscale plan that an evaluation of BACM was being deferred to the full serious plan. ACLPI asserts that the final microscale plan does not contain a complete BACM analysis meeting all the requirements of EPA's PM–10 serious area guidance [3] nor does the plan contain any explanation of why measures were rejected.

Response: EPA's findings regarding the States' compliance with the RACM and BACM requirements in the context of the microscale plan recognize that this plan is limited in nature and, thus, is only a part of—is in essence a down payment on—the full serious area PM–10 plan contemplated by section 189(b) of the Act and relevant Agency guidance. Consequently, EPA agrees that these measures have not been shown to constitute complete BACM for the eight significant source categories in the microscale plan and that the plan does not contain a complete BACM analysis meeting the requirements of the *Addendum*. EPA acknowledged the limited nature of these determinations when it stated, in its proposed action on the microscale plan, that the proposed findings on RACM and BACM implementation are "applicable only to the microscale plan and thus * * * will not constitute EPA's final decision as to the State's full compliance with CAA section 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM for the eight source categories." 62 FR 31035. EPA further stated in its proposal, "[t]he subject of this proposed action is the microscale plan only; the full regional plan is not due until late 1997[; therefore,] it is * * * premature to determine if the microscale plan, in and of itself, fully complies with the Clean Air Act requirements for moderate and serious PM–10 nonattainment areas." 62 FR 31036. The proposal goes on to conclude that the State "will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan." 62 FR 31035.

The *Addendum* defines BACM, among other things, as the maximum degree of emission reduction achievable, considering energy, economic and environmental impacts and outlines a multi-step process for identifying BACM. *Addendum* at 42010–42014. The steps are (1) development of a detailed emission inventory of PM-10 sources and source categories, (2) air quality modeling evaluating the impact on PM–10 concentrations of the various sources and source categories to determine which are significant, and (3) identifying potential BACM controls for significant source categories including their technological feasibility, costs, and energy and environmental impacts.

Although detailed information was developed in the microscale plan regarding factors such as the number and type of emissions sources and their emissions, this information was gathered only for the limited geographic area around the monitors addressed by the microscale plan. However, EPA and the State agreed that any identified BACM controls resulting from the microscale plan would be implemented regionally, that is, throughout the entire nonattainment area. Marcus letter. As a technological and planning matter, it is more logical to address the third step of the BACM analysis (as outlined in the *Addendum*) by assessing the effects of control implementation on the regional scale rather than the localized one considered by the microscale plan.[4] In other words, while significant sources of PM–10 and candidate BACM for those sources could be identified within the scope of the microscale plan, the final determination about whether such controls represent the maximum degree of emission reductions achievable given economic, energy and environmental considerations depends on the type of information being developed for the regional plan due in December.[5] Therefore, it is reasonable for the State to undertake the full BACM analysis in the context of the regional plan and for EPA to defer its assessment of the State's compliance with the requirements accordingly.

This is not to say that some parts of the BACM analysis were not appropriate for the microscale plan. In fact, the State performed the BACM analysis required by the *Addendum* except for the final detailed evaluation of economic, energy, and environmental considerations to determine if the measures represented the maximum degree of control. It developed an emission inventory around each monitor and evaluated the impact of each source category on ambient concentrations. It also identified candidate BACM controls for most significant source categories (Plan, Appendix B, pp. 4–8—4–9) by reviewing EPA's fugitive dust guidance documents and PM–10 controls programs in other areas including the South Coast (Los Angeles) Air Quality Management District and the Coachella Valley (Palm Springs), California. Plan, Appendix B, p. 3–1. Based on the documentation of this effort in the

[3] This guidance is referred to as the *Addendum* and is found in "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994)

[4] Regional implementation assured that the air quality benefits associated with the controls identified at a microscale site were realized over the much larger nonattainment area and not just narrowly at the particular microscale site. The regional implementation approach was taken because EPA believed that these regional air quality benefits would outweigh any benefits that would have accrued from a full BACM analysis resulting in implementation of controls at the microscale sites alone. The Agency believes that this preferable approach warrants the brief six month deferment of the full BACM analysis to the full regional plan.

[5] An example will illustrate the importance of this regional information in determining BACM: the microscale plan may have shown that it is economically feasible to pave all unpaved roads within a small microscale domain, but a regional analysis may very well show that it is economically infeasible to do so within the almost 2,900 square miles of the Maricopa County PM–10 nonattainment area.

microscale plan, EPA has determined, given the inherent limitations of the microscale approach, that the plan's BACM analysis is consistent where relevant with the guidance in the *Addendum*. 62 FR 31031–31032.

Comment: ACLPI disagrees with EPA's assertions that some of the dust control strategies in the microscale plan constitute BACM because they represent an improvement over existing RACM. ACLPI argues that a control measure is not BACM merely because it is more effective than an existing measure or merely because it emphasizes prevention; rather BACM is the maximum degree of emission reduction achievable, considering energy, economic and environmental impacts.

Response: As discussed immediately above, a full BACM analysis as contemplated by the *Addendum* was not possible, for the limited purposes of the microscale plan, in the microscale plan; therefore, it was not possible to determine if any particular candidate BACM represented the "maximum degree of emission reduction achievable, considering energy, economic and environmental impacts." The *Addendum*, however, recognizes that the source categories for PM–10 are varied and, consequently, does not limit its description of BACM to this definition. In the *Addendum*, BACM can "include, though it is not limited to, expanded use of some of the same types of control measures as those included as RACM in the moderate area SIP." *Addendum* at 42013. This is necessarily the case because the universe of control measures available to States to address certain PM–10 sources, such as fugitive dust, is limited. The technical guidance on control of fugitive dust sources [6] makes this point: "When a fugitive dust source has been controlled under a RACM strategy, the implementation of BACM will generally involve additive measures that consist of a more extensive application of fugitive dust control measures imposed under RACM." Fugitive Dust BACM TID, p. 1–6.

EPA also states in the *Addendum* a preference that BACM include pollution preventive measures and measures that provide for long-term sustained progress toward attainment rather than quick, temporary controls. *Addendum* at 42013. With respect to this criterion, EPA's fugitive dust guidance states: "The reduction of source extent and the incorporation of process modifications or adjusted work practices which reduce the amount of exposed dust-producing material constitute preventive [best available control] measures for control of fugitive dust emissions." Fugitive Dust BACM TID, p. 1–6.

Given that both the *Addendum* and the Fugitive Dust BACM TID provide that adoption of control measures that go beyond or expand the use of adopted RACM and that emphasize prevention constitute BACM for fugitive dust sources especially, it is appropriate for EPA to assess the BACM analysis in the microscale plan in terms of these criteria, as well as to conclude that the microscale plan's BACM demonstration, within the narrow scope of that plan, is acceptable. These criteria are discussed in greater detail in the proposal and TSD (62 FR 31029 and TSD, p. 21) and are, as noted, fully consistent with the *Addendum*. Finally, EPA notes that, given the limited set of measures available for control of PM–10 fugitive dust sources, the BACM selected for implementation after the complete BACM analysis required by the *Addendum* is performed for the regional plan may be the same as those identified in the microscale plan.

Comment: ACLPI asserts that EPA must disapprove the BACM demonstration for all source categories in the microscale plan, not just the five that EPA proposed and that such a disapproval would not impose any severe or unexpected burdens on the State since the State is already planning to do a full BACM analysis after submission of the microscale plan. ACLPI asserts that EPA's approval of the state's "thin or nonexistent" analysis as a BACM demonstration would create a serious risk of weakening the entire particulate matter program because other states may well cite EPA's action here as evidence of what constitutes BACM for these sources when in fact there are much more effective measures in practice.

Response: EPA has found that the microscale plan contains adequate BACM demonstrations for three source categories and inadequate BACM demonstrations for five categories and has fully documented its determinations in the proposal and supporting TSD. 62 FR 31031–31035 and TSD, pp. 24–34. EPA based its determination on Clean Air Act requirements, the *Addendum*, the requirements for the microscale plan laid out in the Marcus letters, the inherent limitations of the microscale approach, and the information presented in the microscale plan.

ACLPI's concern about risking the entire particulate matter program because other states may cite to this action is unfounded. First, EPA has made it clear that its findings are limited to the microscale plan and that "the State will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan." 62 FR 31035. Second, as noted by ACLPI in its comments, the final determination of BACM is based, per EPA guidance, on a showing that a selected control is the "maximum degree of emission reduction achievable, considering energy, economic and environmental impacts." *Addendum* at 42010. Since determining BACM for significant source categories like those in the microscale plan is necessarily based on area-specific information regarding energy, economics, and environmental impacts, each serious PM–10 area must perform its own BACM analysis. While other areas may review the microscale plan to identify candidate BACM measures, they cannot assume that something is or is not BACM simply because it has been determined to be so in the microscale plan.

Comment: ACLPI comments that the plan does not clearly identify which control strategies will be required in a given situation, noting that Rule 310 and the dust control plan form list various control options, some of which may constitute BACM but there is no assurance that the BACM option will be chosen by the source in any given situation. On the same theme, ACLPI notes that while the attainment demonstration at the Salt River site assumed watering to the depth of the cut, the plan does not clearly require this strategy in every situation. ACLPI asserts that EPA should condition its approval of the attainment demonstration at the Salt River site on the County providing a clear commitment to requiring this strategy.

Response: While the dust control plan checklist covers a broad range of dust generating activities, it narrowly limits the control options available for any particular activity. For example, the BACM identified in the microscale plan for disturbed cleared areas is stabilization of the surface at all times including weekends.[7] This BACM is reflected on the checklist in the category "temporary stabilization" which requires stabilization of disturbed cleared areas (including weekends and

[6] "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2–92–004, September 1992 (Fugitive Dust BACM TID). This document is one of several guidance documents that EPA was required to develop on RACM and BACM for certain PM–10 source categories pursuant to CAA section 190.

[7] The modeling analysis indicated that the needed control was stabilization or crusting of disturbed surface areas at all times including weekends. The analysis did not depend on a particular control technique for achieving this stabilization. Plan, p. 27.

holidays) using one of two equivalent control techniques—water to form a crust or application of chemical stabilizers to form a crust.[8,9] Plan, p. 34.

For the Salt River site, ACLPI's comment illustrates the importance of regional evaluation in the final determination of BACM. While wetting to the depth of the cut was appropriate for the cutting operation at the Salt River site, it may not always be appropriate at cutting operations elsewhere in the nonattainment area. For example, soil types vary throughout the Maricopa area and in some places a coleche layer or patch may be present. A coleche layer is impermeable to water and thus watering to the depth of the cut is not feasible when a coleche layer is encountered during cutting operations. Plan, Appendix G, p. 2. Since dust control is still needed where water to the depth of the cut is impracticable, the provision of a second equivalent control option—in this case, watering as necessary to prevent or minimize visible emissions—is reasonable and necessary. Since the checklist already requires application of at least one of these two options, EPA does not believe that it need condition its approval of the attainment demonstration at the Salt River monitor on the County providing a clear commitment to require watering to the depth of the cut in every situation.

Comment: Stating that the Clean Air Act requires that the SIP assure adequate resources for enforcement and that the attainment demonstrations in the microscale plan depend on adequate enforcement of Rule 310, ACLPI asserts that the County continues to operate this program with "grossly" inadequate staffing levels. ACLPI notes that the plan indicates that the County is dedicating only 1.75 FTEs to the dust control program and asserts that other county inspectors are "available" to perform field observations and respond to complaints, but apparently only when their other duties allow and that the County does not quantify or even estimate how much time these other inspectors will spend on Rule 310 enforcement. ACLPI asserts that, because there is no commitment to assign any specified level of staffing from this group, EPA must assume for SIP purposes that it will be zero.

Response: The microscale plan does not indicate that the County is dedicating only 1.75 FTE to implementing Rule 310. The plan clearly indicates that 1.75 FTE is the number of staff that are assigned full time to Rule 310 implementation and that there are a number of other personnel who work on Rule 310 implementation as part of their responsibilities and as needed. These other personnel include the public involvement coordinator, the small business assistance program, and 19 other inspectors, aides, engineers and supervisors.[10] Plan, Appendix E, Letter, Joy Bell, MCESD, to Joe Gibbs, ADEQ, May 6, 1997 (Bell letter).[11] It should also be noted that the County's commitment to use these other resources to implement Rule 310 is not "when available" as ACLPI asserts but "as needed." Plan, Appendix E, Bell letter. The Cities are also contributing resources to improving implementation of Rule 310 through the regional coordination effort. Plan, Appendix E, "Resolutions Adopted by Various Cities and Towns within Maricopa County" (city resolutions).

EPA does not believe that it must be assumed for SIP purposes that the resources from these other inspectors must be zero simply because the County did not quantify or even estimate how much time these other inspectors will spend on Rule 310 enforcement. Inspectors inspect facilities, and most facilities have multiple, distinct emission points. Each point is potentially subject to a different rule or regulation. Because of this, inspectors are trained to be able to inspect facilities for compliance with a number of rules.[12] Because an inspector may do inspections for compliance with multiple rules on a single site visit, it is difficult, if not impossible, to tease out just how much time is or will be spent inspecting for compliance with a particular rule. Thus, the lack of a specific numerical FTE commitment to Rule 310 implementation for the 19 inspectors, aides, engineers, and supervisors does not bar considering their availability in determining if the plan provides for adequate resources.[13]

Most importantly, MCESD's commitments to improving Rule 310 implementation go well beyond just adding staff. The commitments include upgrading the Rule's implementation guidelines, educating the regulated community about its responsibilities under the Rule, revising its inspection procedures, providing a small business assistance program, and coordinating with the Cities and towns of Maricopa County. To judge the adequacy of the resources to carry out the microscale plan's control strategy, EPA evaluated this entire set of commitments as well as the information contained in the plan about the nature and extent of sources contributing to the 24-hour PM–10 standard exceedances and the controls needed to eliminate these exceedances. This evaluation (which is discussed extensively in the proposal and the TSD) led EPA to two conclusions: One, that the microscale plan provided the necessary assurances that adequate resources are available to implement Rule 310 for permitted sources, and two, that the plan did not provide the required assurances that controls will be implemented by Maricopa County on non-permitted sources. As a result of these conclusions, EPA is approving the RACM/BACM demonstration for permitted source categories and disapproving the demonstrations for the non-permitted source categories.

Comment: In its April 28, 1997 comments ACLPI notes that in addition to inspecting 1,200 to 1,600 new permittees every year, these inspectors must respond to complaints and monitor compliance by previously permitted facilities and that it seems impossible that the County will be able to inspect each new permittee once per year unless the inspectors neglect other facilities. ACLPI notes further that once per year inspection is grossly inadequate in many cases—particularly where a source has a chronic problem

[8] The equivalency of these two measures is shown in Table 4–1 (Plan, p. 22) in the microscale plan which gives the control efficiency of chemical stabilization at 82–97 percent and that of watering to maintain a crust at 90 percent.

[9] This limitation on control options is also true for the other two source categories for which EPA is approving the RACM/BACM demonstration: industrial haul roads (3 options, stabilize with gravel, dust suppressant or water) and earthmoving (2 options, water to the depth of the cut or water to eliminate or minimize visible emissions). Plan, p. 34.

[10] These inspectors are the ones who inspect stationary sources that may have Rule 310 sources, such as earth moving, located on them (like many of the stationary sources surrounding the Salt River monitor) and respond to complaints. Letter, Joy A. Bell, MCESD, to Frances Wicher, EPA, July 2, 1997 (July 2 Bell letter).

[11] The Maricopa County Board of Supervisors adopted on May 14, 1997 a resolution committing to implement improvements to the administration of the fugitive dust control program and to foster interagency cooperation to address fugitive dust. The microscale plan included the draft resolution, and ADEQ transmitted the adopted resolution to EPA on May 27, 1997. See letter from Nancy Wrona, ADEQ, to John Kennedy, EPA.

[12] EPA considers an on-site visit to a facility an inspection only if it meets EPA's Level II inspection requirements. In short, Level II inspections require an assessment of the compliance status of all units within a source that are subject to SIP, New Source Performance Standards, or National Emission Standards for Hazardous Air Pollutant regulation. "Revised Compliance Monitoring Strategy," March 1991, (Revised CMS) p. 3.

[13] EPA again notes that the MCESD committed to use these inspection resources as needed to implement Rule 310. The County also committed to revising its standard operating procedures for stationary source inspections to include Rule 310 compliance checks. Plan, Appendix E, Bell letter.

and requires repeated visits. Finally, ACLPI states that the County does not explain how it expects to identify unpermitted sources that fail to self-report.

Response: MCESD has committed to inspecting all sites of 10 acres and larger (Plan, Appendix E, Bell letter) and targets smaller sources based on past history of the contractor and/or developer and field observations. Plan, p. 12. Resources in the plan are adequate for this level of inspection as committed to by MCESD. Between June 1, 1996 and May 31, 1997, the County inspected 43 percent of sources 10 acres or greater. July 2 Bell letter. This was the inspection rate with only 0.75 FTE dedicated to the program. With the additional FTE allocated to the program, the County should easily meet its commitment. Plan, Appendix E, Bell letter. The County is upgrading and integrating its database to be better able to identify problem sources. Plan, Appendix E, Bell letter. In addition, the cooperative program with Cities that includes better training of City inspectors on Rule 310 requirements should also help identify and target problem sources. Plan, Appendix E, city resolutions.

Focusing resources on and targeting annual inspections to larger sources (with their inherent ability to be more polluting) are consistent with EPA's inspection guidance which calls for inspecting large sources annually but does not specify an inspection frequency for smaller sources.[14]

The County addressed its method for identifying unpermitted sources in the microscale plan and agreed to provide an annual summary of notices of violations and citations for failure to obtain earthmoving permits. Plan, Appendix G, p. 18.

Comment: In its April 28, 1997 comments, ACLPI enclosed excerpts of EPA's July, 1992 audit of the County's Air Quality Program. ACLPI states that among other things, the audit found that the County failed to inspect many facilities on an annual basis, that enforcement and penalties were grossly inadequate, and that there was no program to identify unpermitted facilities. ACLPI also enclosed a copy of the 1996 internal County Audit finding that the Air Pollution program was seriously understaffed, and that the County had no process in place to verify the accuracy of emissions survey information submitted by sources. ACLPI asserts that in light of these findings, the County cannot adequately expand Rule 310 enforcement by adding just one FTE.

Response: The County has made a number of changes to its program to address EPA's and the County auditor's findings. As noted in the microscale plan, MCESD has added five inspectors since January, 1996 (Plan, Appendix G, p. 26) and has moved to improve its database tracking systems to address problems in verifying the accuracy of emission survey information submitted by sources. (See, in general, *Memorandum,* Al Brown, Director, MCESD, to Ross Tate, Lead Auditor, Internal Audit Department, "Maricopa County Environmental Services Department's Response to the June 1996 Performance Audit," July 12, 1996, reproduced in the Plan, Appendix G). EPA evaluated MCESD's enforcement policy for the proposal and found that it is adequate to meet the requirements of 40 CFR 51.111(a) and CAA section 110(a)(2)(C). 62 FR 31036.

Comment: ACLPI also takes issue with EPA's assertion that the state need not control source categories that contribute less than 5 μg/m³ to a location of expected 24-hour exceedance. ACLPI claims that there is absolutely no authority in the Act for EPA to exempt such sources and that such an exemption is contrary to the Act's emphasis on timely attainment and protection of health. Control of a source category contributing 5 μg/m³, could make a difference between attainment and nonattainment. ACLPI gives, as an example of its position, a site with ambient 24-hour levels in the 155 to 158 μg/m³ range and states that with a 80 percent control effectiveness of a source category contributing 5 μg/m³, the site would become attainment. Based on this example, ACLPI concludes that it is wholly irrational for EPA to assert that such a source category is invariably de minimis. Further, ACLPI asserts that since PM–10 is a nonthreshold pollutant and thus adverse health effects increase on a linear scale with increased concentration, any reductions in PM–10 levels will have direct public health benefits.

ACLPI claims that EPA does not explain where the de minimis principle comes into play in its proposed approval of the microscale plan and asks EPA to provide such an explanation in response to its comments.

Response: Contrary to what the comment implies, EPA has not taken the position in this rulemaking—nor does the Agency's PM–10 serious area guidance take the position—that the State need not control insignificant source categories if such controls are needed for attainment. Rather, EPA's position is that the level of control on such insignificant sources need only be at the level required to demonstrate reasonable further progress and expeditious attainment. *Addendum* at 42011. This level may not be at RACM, or if applicable, BACM levels. In other words, the de minimis policy is invoked only for determining which source categories need RACM and/or BACM and not for determining which source categories need controls for attainment. For serious PM–10 nonattainment areas such as the Maricopa County area, the CAA requires the plan to include not only BACM but also a demonstration of attainment by the statutory deadline or the most expeditious alternative deadline practicable. Sections 189(b)(2) and 189(b)(1)(A). EPA's de minimis exemption for BACM does not interfere with this latter requirement for expeditious attainment and thus does not defeat the Act's requirement for timely attainment and protection of health.

ACLPI's example is somewhat puzzling because it appears to assume that the 155 to 158 μg/m³ level is made up of 30 plus source categories each contributing no more than 5 μg/m³ (31 sources each contributing 5 μg/m³=155 μg/m³). This case is very unlikely; what is more likely is that there would be one or more significant source categories in addition to a number of insignificant ones that make up the 155–158 μg/m³ level. Adequate controls on these significant sources would reduce ambient concentrations below the standard. Even if this were not the case, a state still is required to demonstrate attainment and thus would need to control at least some of the de minimis sources.

EPA did provide a thorough explanation of how the de minimis principle affected its proposed action on the microscale plan. First, EPA fully discusses its de minimis policy and the rationale and legal authority for that policy in the *Addendum* at 42011. This policy states that BACM are required for all categories of sources in serious areas unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM–10 NAAQS and that a source category will be presumed to contribute significantly to a violation of the 24-hour NAAQS if its PM–10 impact at the location of the expected violations would exceed 5 μg/m³. EPA referenced

[14] "Revised Compliance Monitoring Strategy," March 1991, Appendix 5. In California, most air pollution control districts inspect all their minor sources at least once every two (e.g., Ventura County) to four years (South Coast). See FY 1995–97 Compliance Operating Plans.

this discussion in the proposal in the section describing the requirement for BACM. 62 FR 31028. Secondly, EPA proposed, solely for the purposes of evaluating the microscale plan, to use the 5 $\mu g/m^3$ action level to determine which source categories required RACM. 62 FR 31027.

The State generated tables that listed each contributing source category at each monitor and that source's ambient impact at the monitor and at the point of maximum concentration. Plan, Tables 3–2 to 3–5, pp. 17–19 and Appendix A, Tables 5–2 to 5–7 pp. 5–4—5–9 and Table 7–3, p. 7–20. Based on the State's documentation, EPA determined and thoroughly documented which source categories were significant and thus required the application of RACM and BACM. 62 FR 31031 and TSD at pp. 24–27. Except for some source categories at the Salt River monitor (TSD, p. 25), EPA did not also list the insignificant sources at each monitor since this information can be easily determined from the cited tables in the microscale plan and in the TSD (Tables II–3 through II–6, pp. 15–18). EPA has revised the TSD to specifically state which source categories EPA found insignificant. These following source categories were found to be insignificant: for the Salt River monitor, industrial yards, surface mining, other industrial activities, paved roads, trackout, and paved parking lots;[15] for the Maryvale monitor, paved roads and unpaved roads;[16] for the Gilbert monitor, paved roads and unpaved roads; and for the West Chandler monitor, paved and unpaved roads. It should be noted that even complete elimination of emissions from these insignificant sources would not have resulted in attainment at any of the monitors.

EPA has not made a finding that PM–10 is a nonthreshold pollutant; that is, that there is a direct linear relationship between PM–10 reductions and health benefits to the public. Although the PM–10 NAAQS is set—indeed is required under CAA section 109(b) to be set—at levels that provide an adequate safety margin with respect to overall public health, some degree of risk remains at levels below the NAAQS. As described extensively in the recent proposal to revise the particulate matter NAAQS,[17] the overall consistency and coherence of the epidemiological evidence strongly suggests a likely causal role of ambient particulate matter in contributing to adverse health effects (61 FR 65648 and 65653); however, at the same time, EPA cautioned that seeking to derive quantitative health risk estimates from this evidence includes significant uncertainties (61 FR 65649 and 65653). These uncertainties are greater with respect to attempts to estimate health risks associated with the coarse fraction of particulate matter, that is, particulate with diameters between 2.5 and 10 microns (61 FR 65649). Fugitive dust is primarily coarse fraction PM–10 and, as demonstrated in the microscale plan, fugitive dust is the primary cause of 24-hour PM–10 exceedances in the Maricopa County area. Thus, ACLPI's claim that PM–10 is a nonthreshold pollutant is unsupported by the current scientific evidence.

IV. Final Actions

A. Final Approvals and Disapprovals

For the reasons discussed above and in the proposal, EPA is approving:

(1) Under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving, and industrial haul roads; and

(2) Under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c), the attainment and RFP demonstrations for the Maryvale and Salt River sites.

EPA is also approving the following as elements of the Arizona PM–10 State Implementation Plan for the Maricopa area:

(1) The resolution by the County of Maricopa to improve the administration of Maricopa County's fugitive dust control program and to foster interagency cooperation (adopted May 14, 1997);

(2) The resolutions of intent to work cooperatively with Maricopa County to control the generation of fugitive dust pollution adopted by the Cities of Phoenix (April 9, 1997), Tempe (March 27, 1997), Chandler (March 27, 1997), Glendale (March 25, 1997), Scottsdale (March 31, 1997), and Mesa (April 23, 1997) and the Town of Gilbert (April 15, 1997); and

(3) MCESD's Rule 310 (Open Fugitive Dust Sources), Rule 311 (Particulate Matter from Process Industries) and Rule 316 (Nonmetallic Mineral Mining and Processing).[18]

EPA is finding that the microscale plan: (1) provides the necessary assurances that the state and local agencies have adequate personnel, funding and authority under state law to carry out the submitted microscale plan; and (2) includes an adequate enforcement program, as required by CAA sections 110(a)(2)(E)(i) and 110(a)(2)(C).

For the reasons discussed above and in the proposal, EPA is disapproving:

(1) Under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads; and

(2) Under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c)(1), the attainment and RFP demonstrations at the West Chandler and Gilbert sites.

These approvals, disapprovals, and findings are applicable only to the microscale plan and thus, do not constitute EPA's final decision as to the State's full compliance with the requirements of CAA sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM for the eight source categories and CAA sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and RFP demonstrations at the Salt River, Maryvale, Gilbert and West Chandler monitoring sites. The State will need to re-evaluate appropriate RACM and BACM for these sources in the full regional plan and, because regional factors may influence attainment at these sites, the State will need to re-evaluate modeling at all four sites as part of that plan.

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 a revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to

[15] Except for paved roads and paved parking areas, all these source categories are already subject to controls and in most cases are permitted by MCESD. Improvements to the overall permitting, inspection, and enforcement program at the County should improve implementation of the controls on these sources.

[16] Unpaved roads is a significant source category at the Salt River monitor and is thus a significant source category subject to RACM and BACM requirements even thought it was found to be an insignificant source category at the other three monitors. EPA is disapproving the plan's provisions for implementing RACM/BACM for this source category. The recently complete regional emission inventory shows that paved roads are very likely to be a significant source category in the regional plan. *1994 Regional PM–10 Emission Inventory for the Maricopa County Nonattainment Area* (Draft Final Report), Maricopa Association of Governments, May 1997, p. 2–2.

[17] 61 FR 65638 (December 13, 1996). The final notice revising the particulate matter standards was signed by the Administrator on July 16, 1997.

[18] These rules were originally approved by EPA as part of the approval of the Maricopa moderate area plan in 1995. 60 FR 18009. While not at issue in the litigation regarding that plan, EPA's approval of these rules was also incidently vacated by the *Ober* decision; therefore, EPA must restore its approval of these rules.

relevant statutory and regulatory requirements.

B. Consequences of the Final Disapprovals

As noted before, EPA required submittal of a microscale plan meeting both the moderate and serious area requirements for the 24-hour PM–10 standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. The microscale and regional plans taken together would satisfy both the moderate area requirements for the 24-hour standard mandated by the Ninth Circuit in *Ober* and the serious area planning requirements for both standards. The subject of this final action is the microscale plan only; the full regional plan is not due until late 1997. It is, therefore, premature to determine if the microscale plan, in and of itself, fully complies with the Clean Air Act requirements for moderate and serious PM–10 nonattainment areas. Such a determination is not possible until the regional plan is submitted and reviewed.

Because the microscale plan taken alone is not intended to fully comply with the RACM/BACM implementation, reasonable further progress and attainment demonstration requirements of the Clean Air Act, the final disapprovals of portions of the microscale plan do not trigger sanctions under CAA section 179(a). CAA section 179(a) requires the imposition of one of the sanctions in section 179(b) within 18 months of a disapproval if EPA "disapproves a [State] submission * * * based on the submission's failure to meet one or more of the elements required by [the CAA]". Because the purpose of the microscale plan was to, in effect, provide a down payment towards meeting certain requirements of the Act, EPA is not, at this time, proposing to find that the State has failed to meet any of the applicable elements required by the CAA as contemplated by section 179(a).

EPA is subject to the terms of a consent decree approved by the U.S. District Court for the District of Arizona on March 25, 1997. *Ober* v. *Browner*, No. CIV 94–1318 PHX PGR. The consent decree obligates EPA to propose a federal implementation plan (FIP) for PM–10 in the Maricopa nonattainment area by March 20, 1998 and finalize that FIP by July 18, 1998 [19] if the Agency disapproves all or part of the microscale plan. Therefore, based on the final disapprovals described above, EPA has an obligation to promulgate a regional moderate area PM–10 FIP that addresses the statutory requirements for attainment, RACM and RFP. Under the consent decree, the scope of this FIP obligation is reduced to the extent that EPA approves by July 18, 1998 SIP provisions meeting the statutory requirements for RACM, RFP and attainment for moderate PM–10 nonattainment areas.

EPA believes, as is expressed in CAA section 101(a), that air pollution control is primarily the responsibility of states and local jurisdictions. Therefore, the Agency will work with the State of Arizona and the local agencies and jurisdictions responsible for PM–10 planning and control in Maricopa County to develop SIP provisions that can reduce the scope of, or eliminate, any potential FIP. Considerable work is already underway or planned in the area to address the PM–10 problem. As noted before, the full serious area regional PM–10 plan is due December 10, 1997. In addition, the microscale plan contains two initiatives, MCESD's regional program to address controls on nonpermitted sources and the ADEQ/MCESD/NRCS agreement to address fugitive dust from agricultural sources, that are targeted at significant but currently uncontrolled sources of PM–10.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 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 business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 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. Similarly, withdrawal of the FIP contingency process does not impose any new requirements. Therefore, because the federal SIP approval and FIP withdrawal does not impose any new requirements, the Administrator certifies that they do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids 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 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 2 U.S.C. 1501–1571, 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 that 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 this rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimate costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or

[19] The FIP deadlines each advance 2 months if EPA fails to act on the microscale plan by July 18, 1997.

tribal governments in the aggregate or to the private sector. This federal action approves pre-existing requirements under State or local law, imposes no new Federal requirements, and withdraws other federal requirements applicable only to EPA. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, results from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) 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 judaical review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

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

Dated: July 18, 1997.

Harry Seraydarian,

Acting Regional Administrator.

For the reasons set forth in this notice, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended as follows:

a. By removing and reserving paragraph (c)(73);

b. By revising paragraph (c)(74)(i)(A) and removing and reserving paragraph (c)(74)(i)(B);

c. By removing paragraph (c)(77)(i)(A)(*1*) and redesignating paragraph (c)(77)(i)(A)(*2*) as (c)(77)(i)(A)(*1*); and

d. By adding paragraph (c)(88), to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(74) * * *

(i) * * *

(A) Maricopa County Environmental Services Department new Rule 316, adopted July 6, 1993, and revised Rule 311, adopted August 2, 1993. Note: These rules are restored as elements of the State of Arizona Air Pollution Control Implementation Plan effective September 3, 1997.

* * * * *

(88) Plan revisions were submitted on May 7, 1997 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310, adopted September 20, 1994.

(*2*) Resolution To Improve the Administration of Maricopa County's Fugitive Dust Program and to Foster Interagency Cooperation, adopted May 14, 1997.

(B) The City of Phoenix, Arizona.

(*1*) A Resolution of the Phoenix City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted April 9, 1997.

(C) The City of Tempe, Arizona.

(*1*) A Resolution of the Council of the City of Tempe, Arizona, Stating Its Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 27, 1997.

(D) The Town of Gilbert, Arizona.

(*1*) A Resolution of the Mayor and the Common Council of the Town of Gilbert, Maricopa County, Arizona, Providing for the Town's Intent to Work Cooperatively with Maricopa County, Arizona, to Control the Generation of Fugitive Dust Pollution, adopted April 15, 1997.

(E) The City of Chandler, Arizona.

(*1*) A Resolution of the City Council of the City of Chandler, Arizona, Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 27, 1997.

(F) The City of Glendale, Arizona.

(*1*) A Resolution of the Council of the City of Chandler, Maricopa County, Arizona, Stating Its Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 25, 1997.

(G) The City of Scottsdale, Arizona.

(*1*) A Resolution of the Scottsdale City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution, adopted March 31, 1997.

(H) The City of Mesa, Arizona.

(*1*) A Resolution of the Mesa City Council Stating the City's Intent to Work Cooperatively with Maricopa County to Control the Generation of Particulate Air Pollution and Directing City Staff to Develop a Particulate Pollution Control Ordinance Supported by Adequate Staffing Levels to Address Air Quality, adopted April 23, 1997.

* * * * *

3. Section 52.123 is amended by adding paragraph (f) to read as follows:

§ 52.123 Approval status.

* * * * *

(f) Maricopa County PM–10 Nonattainment Area (Phoenix Planning Area). (1) *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) submitted by the Arizona Department of Environmental Quality on May 7, 1997.

(i) The Administrator approves the provisions for implementing RACM and BACM for the significant source categories of disturbed cleared areas, earth moving, and industrial haul roads.

(ii) The Administrator approves the attainment and reasonable further progress demonstrations for the Maryvale PM–10 monitoring site and Salt River PM–10 monitoring site.

(iii) The approvals in paragraphs (f)(1)(i) and (ii) of this section are applicable only to the plan identified in paragraph (f)(1) of this section and do not constitute the Administrator's final decision as to the State's full compliance with the requirements of Clean Air Act sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM and sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and reasonable further progress.

4. Section 52.124 is amended by adding paragraph (b) to read as follows:

§ 52.124 Part D disapproval.

* * * * *

(b) Maricopa County PM–10 Nonattainment Area (Phoenix Planning Area). (1) *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) submitted by the Arizona Department of Environmental Quality on May 7, 1997.

(i) The Administrator disapproves the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads.

(ii) The Administrator disapproves the attainment and reasonable further progress demonstrations for the Gilbert PM–10 monitoring site and West Chandler PM–10 monitoring site.

(iii) The disapprovals in paragraphs (f)(1)(i) and (ii) of this section are applicable only to the plan identified in paragraph (f)(1) of this section and do not constitute the Administrator's final decision as to the State's full compliance with the requirements of Clean Air Act sections 189(a)(1)(C) and 189(b)(1)(B) for RACM and BACM and sections 189(a)(1)(B), 189(b)(1)(A) and 189(c)(1) for attainment and reasonable further progress. Therefore such disapprovals do not constitute state failures for the purpose of triggering sanctions under § 179(a) of the Clean Air Act.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0045a; FRL–5863–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definition of volatile organic compounds (VOC) and updates the Exempt Compound list in rules from the Bay Area Air Quality Management District (BAAQMD). The intended effect of approving this action is to incorporate changes to the definition of VOC and to update the Exempt Compound list in BAAQMD rules to be consistent with the revised federal and state VOC definitions.

DATES: This action is effective on October 3, 1997 unless adverse or critical comments are received by September 3, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for these rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules with definition revisions being approved into the California SIP include the following Bay Area Air Quality Management District Rules (BAAQMD): Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8-20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; and 8–50, Polyester Resin Operations. These rules were submitted by the California Air Resources Board to EPA on July 23, 1996.

Background

On June 16, 1995 (60 FR 31633) EPA published a final rule excluding acetone from the definition of VOC. On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On May 1, 1996 (61 FR 19231) EPA published a proposed rule excluding HFC 43–10mee and HCFC 225ca and cb from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and thus, were added to the Agency's list of Exempt Compounds.

The State of California submitted many revised rules for incorporation into its SIP on July 23, 1996, including the rules being acted on in this administrative action. This action addresses EPA's direct-final action for BAAQMD Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8–20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; and 8–50, Polyester Resin Operations. These rules were adopted by the BAAQMD on December 20, 1995 and were found to be complete on October 30, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V [1] and are being finalized for approval into the SIP.

This administrative revision adds acetone, perchloroethylene, HFC 43–10mee and HCFC 225ca and cb to the list of compounds which make a negligible contribution to tropospheric ozone formulation. Thus, EPA is finalizing the approval of the revised definitions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act).

EPA Evaluation and Action

This administrative action is necessary to make the VOC definition in BAAQMD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

The BAAQMD rules being affected by this action to revise the definition of VOC include:

- Rule 8–4 General Solvent and Surface Coating Operations
- Rule 8–11 Metal Container, Closure and Coil Coating;
- Rule 8–12 Paper, Fabric, and Film Coating
- Rule 8–13 Light and Medium Duty Motor Vehicle Assembly Plants
- Rule 8–14 Surface Coating of Large Appliance and Metal Furniture
- Rule 8–19 Surface Coating of Miscellaneous Metal Parts and Products
- Rule 8–20 Graphic Arts Printing and Coating
- Rule 8–23 Coating of Flat Wood Paneling and Wood Flat Stock
- Rule 8–29 Aerospace Assembly and Component Coating Operations
- Rule 8–31 Surface Coating of Plastic Parts and Products
- Rule 8–32 Wood Products
- Rule 8–38 Flexible and Rigid Disc Manufacturing
- Rule 8–43 Surface Coating of Marine Vessels
- Rule 8–45 Motor Vehicle and Mobile Equipment Coating Operations
- Rule 8–50 Polyester Resin Operations

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

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, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 3, 1997 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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 October 3, 1997.

Administrative Requirements

A. Executive Order 12866

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 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 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).

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 State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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) of the APA as amended.

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 October 3, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 10, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(D) Bay Area Air Quality Management District.

(*1*) Rule 8–4, Rule 8–11, Rule 8–12, Rule 8–13, Rule 8–14, Rule 8–19, Rule 8–20, Rule 8–23, Rule 8–29, Rule 8–31, Rule 8–32, Rule 8–38, Rule 8–43, Rule 8–45, 8–50, and 8–51 adopted on December 20, 1995.

* * * * *

[FR Doc. 97–20363 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VT–01–015–01–1217(a); A–1–FRL–5859–9]

Clean Air Act Approval and Promulgation of State Implementation Plans; Vermont: PM10 Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is fully approving a State Implementation Plan (SIP) revision submitted by the State of Vermont, which replaces the total suspended particulate (TSP) prevention of significant (PSD) increments with increments for PM10 (particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers). This action is being taken under the Clean Air Act.

DATES: This action is effective on October 3, 1997, unless adverse or critical comments are received by September 3, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Susan Lancey, Office of Ecosystem Protection, EPA—Region 1, JFK Federal Building (CAP), Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the following locations: Office of Ecosystem Protection, EPA—Region 1, One Congress Street, 11th Floor, Boston, MA 02203; Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676; and Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Lancey at (617) 565–3587 or lancey.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PM10 PSD Increments

Section 107(d) of the 1977 Amendments to the Clean Air Act authorized each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, the EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as "section 107 areas"), including those designations for total suspended particulates (TSP), in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of Part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM10 increments replaced the TSP increments.

EPA promulgated PSD increments for PM10 on June 3, 1993 (see 58 FR 31622–31638). EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. Implementation of the increments by EPA or its delegated states under the Federal PSD program was required by June 3, 1994. The implementation date for SIP-approved State PSD programs (including Vermont) will be the date upon which a particular states' revised program, containing the new PM10 increments, is approved. In accordance with 40 CFR 51.166(a)(6)(i), each State with SIP-approved PSD programs was required to adopt the PM10 increment requirements within nine months of the effective date (or by March 3, 1995).

The PM10 PSD increments were set at the following levels: 4 $\mu g/m^3$ (annual arithmetic mean) and 8 $\mu g/m^3$ (24-hour maximum) for Class I areas, 17 $\mu g/m^3$ (annual arithmetic mean) and 30 $\mu g/m^3$ (24-hour maximum) for Class II areas, and 34 $\mu g/m^3$ (annual arithmetic mean) and 60 $\mu g/m^3$ (24-hour maximum) for Class III areas. At present all attainment areas of the state are Class II, except for the Lye Brook Wilderness Area which is Class I.

The implementation of the PM10 increments will utilize the existing baseline dates and areas for particulate matter. As such, particulate matter increments, measured as PM10, already consumed since the original baseline dates established for TSP will continue to be accounted for, but all future calculations of the amount of increments consumed will be based on PM10 emissions beginning on the implementation date of the PM10 increments (that is, today, the date of EPA approval for Vermont). For further information regarding the PM10 increments, see the June 3, 1993 **Federal Register.**

Summary of Vermont's PM10 PSD Increment SIP Revision

In this action, EPA is acting on revisions to the PSD permitting program for the State of Vermont. Specifically, the Vermont Agency of Natural Resources is amending Air Pollution Control Regulation 5–502(4)(c), Major Stationary Sources and Major Modifications, to replace the TSP increments with the federal increments for PM10. All other regulations and requirements necessary for full

[1] The EPA did not promulgate new PM10 increments simultaneously with the promulgation of the PM10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments "not more than 2 years after the date of promulgation of * * * standards." Consequently, EPA temporarily retained the TSP increments, as well as the Section 107 areas for TSP.

implementation of the PSD program for PM10 are already in place.

The major source baseline date (January 6, 1975) and the minor source baseline date (established in Vermont on May 17, 1990), both for particulate matter measured as TSP, will remain the same for PM10.

By operation of law under the 1990 Clean Air Act Amendments, all of Vermont is currently considered unclassifiable for PM10, however, Vermont does not currently have a section 107 area designation table in 40 CFR part 81 for PM10. This revision includes the addition of an area designation table to Part 81 to indicate that the whole state of Vermont is unclassifiable for PM10.

Procedural Background regarding the PM10 PSD Increment SIP Revision

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

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, April 16, 1992.) The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission. EPA Region I reviewed the SIP revision to determine completeness in accordance with the completeness criteria outlined in 40 CFR 51, Appendix V. Vermont's submittal was found to be complete, and in a letter dated April 28, 1997, EPA Region I informed the Vermont Governor's designee that the submittal was determined complete and explained how the review and approval process would proceed.

Vermont held a public hearing on March 6, 1995 to entertain public comment on the PSD SIP revision. On March 7, 1996, the Secretary of the Agency of Natural Resources (the Governor's designee) submitted revisions to Vermont's Air Pollution Control Regulation 5–502(4)(c), Major Stationary Sources and Major Modifications, to incorporate changes into the SIP-approved State PSD permitting regulations for PM10 and to insure that all elements of the federal PSD program for particulate matter are adopted.

II. Final Action

EPA is approving the SIP revision regarding PM10 PSD permitting as submitted by the State of Vermont.

The 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, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 3, 1997 unless, by September 3, 1997, adverse or critical comments are received.

If the 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. 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 October 3, 1997.

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

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 sections 110 and 301, and subchapter I, part D of the CAA 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 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).

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 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 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 must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: June 18, 1997.

John P. DeVillars,

Regional Administrator, EPA-Region 1.

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 UU—Vermont

2. Section 52.2370 is amended by adding paragraph (c)(24) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(24) Revision to the State Implementation Plan submitted by the Vermont Department of Environmental Conservation on March 7, 1996.

(i) Incorporation by reference.

(A) Letter from the Vermont Department of Environmental Conservation dated March 7, 1996 submitting a revision to the Vermont State Implementation Plan.

(B) Amendments to Table 2 "Prevention of Significant Deterioration Increments" referenced in Section 5–502(4)(c) of the Vermont Agency of Natural Resources Environmental Regulations (effective July 29, 1995).

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. The table in § 52.2375 is revised to read as follows:

§ 52.2375 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area[1]	Pollutant					
	SO_2		PM10	NO_x	CO	O_3
	Primary	Secondary				
Champlain Valley Interstate—Chittenden County:						
Champlain Valley Air Management Area:						
Essex Town (including Essex Jct.)	a	a	a	a	b	b
Burlington City	a	a	a	a	b	b
South Burlington City	a	a	a	a	b	b
Winooski	a	a	a	a	b	b
Remainder of Air Management Area	a	a	a	a	b	b
Remainder of County	a	a	a	a	a	b
Vermont Valley Air Management Area	a	a	a	a	a	a
Addison County	a	a	a	a	a	b
Remainder of AQCR	a	a	a	a	a	a
Vermont Interstate:						
Central Vermont Air Management Area:						
Barre City	a	a	a	a	a	a
Remainder of Air Management Area	a	a	a	a	a	a
Windsor County	a	a	a	a	a	b
Remainder of AQCR	a	a	a	a	a	a

[1] Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those regulations by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.2375, revised as of July 1, 1978.

a. Air quality levels presently below secondary standards or area is unclassifiable.
b. 12/31/82.

4. In § 52.2381, Table 52.2381 is amended by adding a new entry to existing state citation for Section 5–502 to read as follows:

§ 52.2381 EPA—approved Vermont state regulations.

* * * * *

TABLE 52.2381-EPA—APPROVED REGULATIONS

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.2370	Comments and unapproved sections
*	*	*	*	*	*
Section 5–502, Major stationary sources and major modifications.	7/14/95	8/4/97	[Insert *FR* citation from published date].	(c)(24)	
*	*	*	*	*	*

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Subpart C—Section 107 Attainment Status Designations

6. Section 81.346 is amended by adding a table for PM10 at the end of the section to read as follows:

§ 81.346 Vermont.

* * * * * * *

VERMONT—PM10

Designation status	Designation		Classification	
	Date	Type	Date	Type
Whole State	11/15/90	Unclassifiable		

[FR Doc. 97–19622 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL–5847–7]

Outer Continental Shelf Air Regulations Consistency Update for Alaska

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule—consistency update.

SUMMARY: EPA is updating the Outer Continental Shelf ("OCS") Air Regulations as they apply to OCS sources off the coast of Alaska. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of approving the requirements contained in the Alaska Administrative Code to OCS Sources (January 1, 1997), is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: This action is effective September 3, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 sixth Avenue, Seattle, Wa 98101.

Environmental Protection Agency (LE–6102), 401 "M" Street, SW, Room M–1500, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Raymond Nye, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Wa 98101, Telephone: (206) 553–4226.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1992, EPA approved the Alaska Administrative Code to OCS sources. The updated requirements are being promulgated in response to a Notice of Intent filed pursuant to § 55.12(c). EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

EPA Action

In this document, EPA takes final action to incorporate the January 18, 1997 Alaska Department of Environmental Conservation rules into 40 CFR part 55 as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12866 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform

a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this final rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 18, 1997.

Chuck Clarke,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A), to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997.

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Alaska

(a) * * *

(1) The following requirements are contained in the *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997.

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter (effective 1/18/97)

18 AAC 50.010. Ambient Air Quality Standards (effective 1/18/97)

18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions (effective 1/18/97)

Table 1. Air Quality Classifications

18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations (effective 1/18/97)

Table 2. Baseline Dates

Table 3. Maximum Allowable Increases

18 AAC 50.025. Visibility and Other Special Protection Areas with the exception of (b) and (c) (effective 1/18/97)

18 AAC 50.030. State Air Quality Control Plan (effective 1/18/97)

18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 1/18/97)2

18 AAC 50.045. Prohibitions (effective 1/18/97)

18 AAC 50.050. Incinerator Emission Standards (effective 1/18/97)

Table 4. Particulate Matter Standards for Incinerators

18 AAC 50.055. Industrial Processes and Fuel-burning Equipment (effective 1/18/97)

18 AAC 50.065. Open Burning (effective 1/18/97)

(a) General Requirements

(b) Black Smoke Prohibited

(c) Toxic and Acid Gases and Particulate Matter Prohibited

(d) Adverse Effects Prohibited

(e) Air Quality Advisory

(i) Firefighter Training: Fuel Burning

(j) Public Notice

(k) Complaints

18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 1/18/97)

18 AAC 50.080. Ice Fog Standards (effective 1/18/97)

18 AAC 50.100. Nonroad Engines (effective 1/18/97)

18 AAC 50.110. Air Pollution Prohibited (effective 5/26/72)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation (effective 1/18/97)

18 AAC 50.205. Certification (effective 1/18/97)

18 AAC 50.210. Potential to Emit (effective 1/18/97)

18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 1/18/97)

18 AAC 50.220. Enforceable Test Methods (effective 1/18/97)

18 AAC 50.225. Owner-requested Limits (effective 1/18/97)

18 AAC 50.230. Preapproved Limits (effective 1/18/97)

18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 1/18/97)

18 AAC 50.240. Excess Emissions (effective 1/18/97)

Article 3. Permit Procedures and Requirements

18 AAC 50.300. Construction Permits: Classifications (effective 1/18/97)

(a) [untitled]

(b) Ambient Air Quality Facilities

(c) Prevention of Significant Deterioration Major Facilities

(d) Nonattainment Major Facilities

(e) Major Facility Near a Nonattainment Area

(f) Hazardous Air Contaminant Major Facilities

(g) Port of Anchorage Facilities

(h) Modifications
18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator (effective 1/18/97)
18 AAC 50.310. Constructon Permits: Application (effective 1/18/97)
(a) Application Required
(b) Operating Permit Coordination
(c) General Information
(d) Prevention of Significant Deterioration Information Table 6. Significant Concentrations
(e) Excluded Ambient Air Monitoring
(f) Nonattainment Information
(g) Demonstration Required Near A Nonattainment Area
(h) Hazardous Air Contaminant Information
(j) Nonattainment Air Contaminant Reductions
(k) Revising Permit Terms
(l) Requested Limits
(m) Stack Injection
18 AAC 50.320. Construction Permits: Content and Duration (effective 1/18/97)
18 AAC 50.325. Operating Permits: Classifications (effective 1/18/97)
18 AAC 50.330. Operating Permits: Exemptions (effective 1/18/97)
18 AAC 50.335. Operating Permits: Application (effective 1/18/97)
(a) Application Required
(b) Identification
(c) General Emission Information
(d) Fees
(e) Regulated Source Information
(f) Facility-wide Information: Ambient Air Quality
(g) Facility-wide Information: Owner Requested Limits
(h) Facility-wide Information: Emissions Trading
(i) Compliance Information
(j) Proposed Terms and Conditions
(k) Compliance Certifications
(l) Permit Shield
(m) Supporting Documentation
(n) Additional Information
(o) Certification of Accuracy and Completeness
(p) Renewals
(q) Insignificant Sources
(r) Insignificant Sources: Emission Rate Basis
(s) Insignificant Sources: Category Basis
(t) Insignificance Sources: Size or Production Rate Basis
(u) Insignificant Sources: Case-by-Case Basis
(v) Administratively Insignificant Sources
18 AAC 50.340. Operating Permits: Review and Issuance (effective 1/18/97)
(a) Review for Completeness
(b) Evaluation of Complete Applications
(c) Expiration of Application Shield
(d) Preliminary Decision
(e) Public Comment
(f) Record of Public Comment
(g) Final Permit Decision
(l) Permit Continuity
18 AAC 50.345. Opearting Permits: Standard Conditions (effective 1/18/97)
18 AAC 50.350. Operating Permits: Content (effective 1/18/97)
(a) Purpose of Section
(b) Standard Requirements
(c) Fee Information
(d) Source-Specific Permit Requirements
(e) Facility-Wide Permit Requirements
(f) Other Requirements
(g) Monitoring Requirements
(h) Records
(i) Reporting Requirements
(j) Compliance Certification
(k) Compliance Plan and Schedule
(l) Permit Shield
18 AAC 50.355. Operating Permits: Changes to a Permitted Facility (effective 1/18/97)
18 AAC 50.360. Operating Permits: Facility Changes that Violate a Permit Condition (effective 1/18/97)
18 AAC 50.365. Operating Permits: Facility Changes that do not Violate a Permit Condition (effective 1/18/97)
18 AAC 50.370. Operating Permits: Administrative Revisions (effective 1/18/97)
18 AAC 50.375. Operating Permits: Minor and Significant Permit Revisions (effective 1/18/97)
18 AAC 50.380. General Operating Permits (effective 1/18/97)

Article 4. User Fees

18 AAC 50.400. Permit Administration Fees (effective 1/18/97)
18 AAC 50.410. Emission Fees (effective 1/18/97)
18 AAC 50.420. Billing Procedures (effective 1/18/97)

Article 9. General Provisions

18 AAC 50.910. Establishing Level of Actual Emissions (effective 1/18/97)
18 AAC 50.990. Definitions (effective 1/18/97)

* * * * *

[FR Doc. 97–20469 Filed 8–1–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–5868–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Iowa, Kansas, Missouri, and Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 19, 1995, the EPA promulgated Clean Air Act (CAA) section 111(d)/129 emission guidelines for existing Municipal Waste Combustors (MWC) with the capacity to combust in aggregate greater than 35 megagrams (Mg) per day of municipal solid waste (MSW). Section 111(d) requires that states with designated facilities subject to these emission guidelines submit to the EPA plans to control the designated pollutants addressed in the guidelines. If no designated facility is located within a state, the state may submit a letter of certification to that effect, i.e., a negative declaration, in lieu of a plan. The EPA has received negative declarations from Iowa, Kansas, Missouri, and Nebraska regarding designated facilities in their states. Today the EPA is taking action to approve those negative declarations.

DATES: This action is effective October 3, 1997, unless by September 3, 1997, adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551–7787.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act, but emissions of which are subject to a standard of performance for new stationary sources.

On February 11, 1991, the EPA promulgated section 111(d) emission guidelines for existing MWC (56 FR 5523). The emission guidelines were codified at 40 CFR 60 subpart Ca and applied to existing MWC units with the capacity to combust greater than 225 Mg per day of MSW. Section 129 of the Act, added by the 1990 Amendments, required that these emission guidelines be revised to: (1) reflect maximum available control technology; (2) specify guideline emission levels for additional pollutants; and (3) apply to MWC with capacities less than 225 Mg per day of MSW. Accordingly, the EPA, on December 19, 1995, promulgated emission guidelines that meet both the requirement of section 111(d) and section 129 of the CAA. These emission guidelines were codified at 40 CFR 60 subpart Cb, replacing subpart Ca. The subpart Cb emission guidelines apply to existing MWC plants with aggregate charging capacities greater than 35 Mg per day of MSW and establish the

emission limits for MWC metals, MWC acid gases, MWC organics, and MWC nitrogen oxides. Refer to 60 FR 65415 for a complete discussion of subpart Cb.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the Code of Federal Regulations provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant.

II. Final Action

The EPA is taking final action to approve the negative declarations submitted by the states of Iowa, Kansas, Missouri, and Nebraska.

The 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, the EPA is proposing to approve this action should adverse or critical comments be filed. This action is effective October 3, 1997, unless, by September 3, 1997, adverse or critical comments are received.

If the 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 then 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 is effective October 3, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request relating to revision to any 111(d) plan. Each request 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

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the 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, the 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. I hereby certify that approval of these negative declarations will not have a significant impact on 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, the 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The 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 negative declarations in lieu of regulatory plans, 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, the 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 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 62

Environmental protection, Air pollution control, Municipal waste incinerators, Nitrogen dioxide, Particulate matter, and Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 11, 1997.

Dennis Grams, P.E.,

Regional Administrator.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Subpart Q is amended by adding an undesignated center heading and paragraph § 62.3912 to read as follows:

Emissions from Existing Municipal Waste Combustors With the Capacity to Burn Greater than 35 Megagrams Per Day of Municipal Solid Waste

§ 62.3912 Identification of plan-negative declaration.

Letter from the Iowa Department of Natural Resources submitted December 27, 1996, certifying that there are no municipal waste combustors in the state of Iowa subject to part 60, subpart Cb of this chapter.

Subpart R—Kansas

3. Subpart R is amended by adding an undesignated center heading and paragraph § 62.4177 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater than 35 Megagrams Per Day of Municipal Solid Waste

§ 62.4177 Identification of plan—negative declaration.

Letter from the Kansas Department of Health submitted April 26 1996, certifying that there are no municipal waste combustors in the state of Kansas subject to part 60, subpart Cb of this chapter.

Subpart AA—Missouri

4. Subpart AA is amended by adding an undesignated center heading and paragraph § 62.6356 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater than 35 Megagrams Per Day of Municipal Solid Waste

§ 62.6356 Identification of plan—negative declaration.

Letter from the Air Pollution Control Program of the Department of Natural Resources submitted June 3, 1996, certifying that there are no municipal waste combustors in the state of Missouri subject to part 60, subpart Cb of this chapter.

Subpart CC—Nebraska

5. Subpart CC is amended by adding an undesignated center heading and paragraph § 62.6912 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater than 35 Megagrams Per Day of Municipal Solid Waste

§ 62.6912 Identification of plan—negative declaration.

Letter from the Air Quality Section of the Nebraska Department of Environmental Quality submitted May 13, 1996, certifying that there are no municipal waste combustors in the state of Nebraska subject to part 60, subpart Cb of this chapter.

[FR Doc. 97–20475 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300526; FRL–5735–6]

RIN 2070–AB78

Bacillus Cereus Strain BP01; 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 biological pesticide *Bacillus cereus* strain BP01 for use on cotton. Micro Flo Company, acting through their agent SRA International, 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 tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus cereus* strain BP01 on growing crops.

DATES: This regulation is effective August 4, 1997. Objections and requests for hearings must be received by EPA on or before October 3, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300526], must 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, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300526], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services 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.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically 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–300526]. 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.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Boland, 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: 5th fl., CS #1 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8728, e-mail: boland.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1997 (62 FR 34277)(FRL–5727–1) EPA issued a notice pursuant to section 408(d), of the Federal Food Drug & Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by SRA International, 1850 M Street NW., Suite 290, Washington DC, 20036, on behalf of the Micro Flo Company, P.O. Box 5948, Lakeland Florida 33807–5948. 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 establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent *Bacillus cereus* strain BP01 on growing crops.

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 material have been evaluated. The toxicology data requirements in support of this exemption from the requirement of a tolerance were satisfied.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is

"safe." Section 408(c)(2)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue***." EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Additionally, 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." All available information indicates that *Bacillus cereus* strain BP01 when used in cotton will have no human toxicity based upon the lack of mammalian toxicity of this product and the lack of exposure with the cotton growth regulator use pattern. All mammalian toxicology data requirements have been submitted and adequately satisfy the requirements as set forth in 40 CFR 158.740 for microbial pesticides for food, non-food, domestic outdoor and forestry uses. The mammalian toxicology data base includes acute toxicity studies. To date, none of the active microbial pesticidal ingredients registered by the Agency have required subchronic or chronic exposure studies. Also, for food uses of microbial pesticides, the acute toxicity/pathogenicity studies have allowed for the conclusion that an exemption from the requirement of a tolerance is appropriate and adequate to protect human health, including that of infants and children. The results of testing done on *Bacillus cereus* and the end use product Mepichlor/BP01 4-2 agree with this.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*— a. *Food.* While the proposed use pattern will result in dietary exposure with possible residues on food and feed, negligible risk is expected for both the general population and infants and children. Submitted acute toxicology tests confirm that based upon the use sites, use patterns, application method, use rates, low exposure, and lack of significant toxicological concerns, the potential risks, if any, to humans are considered negligible and an exemption from the requirement of a tolerance is warranted. Acute exposure could occur from the proposed outdoor use sites but would be very low because of the low applications rates. The application rate is 2 to 24 fl.oz./A based on growth stage of the crop and previous application history. In considering health risk from microbial pesticides, it is important to recognize the ubiquitous nature of microorganisms. Most microorganisms are considered to be non-pathogenic for humans, despite the continual exposure to high numbers of a myriad of airborne, waterborne, food and soil associated microorganisms as well as human and mammalian commensal microbes on a daily basis. *Bacillus cereus* has been implicated in nosocomial infections in rare instances and in food poisoning incidents. The quality control procedures have ensured that the diarrheal enterotoxin is not present in this product. In summary, the Agency believes that the potential aggregate exposure, derived from dermal and inhalation exposure via mixing, loading and applying *Bacillus cereus*, the oral dietary exposure drinking water containing *B. cereus* strain BP01, should fall well below the currently tested microbial safety levels. There have been no confirmed reports of immediate or delayed allergic reactions to despite significant oral, dermal and inhalation exposure to the microbial product. Therefore, the lack of toxicity associated with *Bacillus cereus* strain BP01, data relating to the post application die-off of *B. cereus* species v background soil population counts of naturally occurring microbes provides a scientific rationale for exempting *B. cereus* strain BP01 from the requirement of a tolerance.

b. *Drinking water exposure.* The microorganism *Bacillus cereus* is ubiquitous in many soils throughout the world. *Bacillus cereus* is not known as an aquatic bacterium and therefore is not expected to proliferate in aquatic habitats. Although the potential exists for a minimal amount of the *B. cereus* strain BP01 which is applied to enter ground water or other drinking water sources, the amount would in all probability be undetectable or more than several orders of magnitude lower than those levels which were tested and are considered necessary for safety. Moreover, *Bacillus cereus* strain BP01 is not considered to be a risk to drinking water. Drinking water is accordingly not being screened for *B. cereus* as a potential indicator of microbial contamination or as a direct pathogenic contaminant. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to *B. cereus* strain BP01 through drinking water. Therefore, the potential of significant transfer to drinking water is minimal to nonexistent.

2. *Other non-occupational exposures.* All mammalian toxicology data requirements have been submitted and adequately satisfy the requirements as set forth in 40 CFR 158.740 for microbial pesticides for food, non-food, domestic outdoor and forestry uses. The mammalian toxicology data base includes acute toxicity studies. Based on the use sites, use patterns, application method, use rates, low exposure, and lack of significant toxicological concerns, as demonstrated in the submitted toxicology studies, the potential risks, if any, to humans are considered negligible.

a. *Dermal exposure.* Exposure via the skin would be the primary route of exposure for mixer/loader applicators. Since unbroken skin is a natural barrier to microbial invasion of the human body, dermal absorption could occur only if the skin were cut, if the microbe were a pathogen equipped with mechanisms for entry through or infection of the skin, or if metabolites were produced that could be dermally absorbed. Based on the application methods, the potential for dermal

exposure exists for pesticide handlers and applicators. The Agency is requiring the appropriate signal word and statements of precaution.

b. *Inhalation Exposure.* Inhalation would be the primary route of exposure for mixer/loader applicators. The pulmonary study showed no adverse effects; the risks anticipated for this route of exposure are considered minimal.

IV. Safety Factors

The toxicity of *Bacillus sp.* is well established. No tolerance is needed since the proposed uses do not include food/feed uses. The information submitted to support the acute toxicity waiver requests, supplemented by available public data, indicate category IV for acute oral toxicity, category III for acute dermal toxicity, category III for primary eye irritation, category IV for primary dermal irritation, and that *Bacillus cereus* strain BP01 is not a dermal sensitizer. *Bacillus cereus* has been implicated in nosocomial infections in rare instances and in food poisoning incidents. The quality control procedures have ensured that the diarrheal enterotoxin is not present in this product.

V. Infants and Children

Consistent with section 408(b)(2)(C) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. A battery of acute toxicity/pathogenicity studies is considered sufficient by the Agency to perform a risk assessment for microbial pesticides. To date, none of the active microbial pesticidal ingredients registered by the Agency have required subchronic or chronic exposure studies. Also, for food uses of microbial pesticides, the acute toxicity/pathogenicity studies have allowed for the conclusion that an exemption from the requirement of a tolerance is appropriate and adequate to protect human health, including that of infants and children. The results of testing done on *B. cereus* strain BP01 and Mepichlor/BP01 4-2 agree with this. Quality control procedures in place during manufacturing ensure that harmful levels of contaminating microorganisms are prevented and the mammalian enterotoxin is not present. In considering health risk from microbial pesticides, it is important to keep the ubiquitous nature of microorganisms in mind. Most microorganisms are considered to be non-pathogenic for humans, despite the continual exposure to high numbers of a myriad of airborne, waterborne, food and soil associated microorganisms, as well as human and mammalian commensal microbes, on a daily basis.

VI. Other Considerations

1. *Endocrine disrupters.* There is no known metabolite that acts as an "endocrine disrupter" produced by this microorganism. As expected from non-pathogenic microorganism, the submitted toxicity/pathogenicity studies in the rodent (required for microbial pesticides) indicate that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. Therefore, no adverse effects to the endocrine or immune systems are known or expected. The Agency is not requiring information on the endocrine effects of this biological 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.

2. *Analytical method.* The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for *Bacillus cereus* strain BP01.

VII. Determination of Safety for U.S. Population, Infants and Children

For the U.S. population, including infants and children, the Agency has not identified any subchronic, chronic, immune, endocrine, dietary, or nondietary exposure issues as they may affect infants and children and the general population. Risks to applicators are mitigated when the product is used according to label directions. Therefore, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population from aggregate exposure to residues of *Bacillus cereus* BP01 microbial plant growth regulator including 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 *Bacillus cereus* strain BP01. Thus, a tolerance for *Bacillus cereus* strain BP01 is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

VIII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) 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 October 3, 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 under the "Addresses" section (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 issues(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 issues(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.

IX. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300526]. A public version of this record, 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 Information and Records Integrity Branch, Information Resources and Services 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, is kept in paper form. Accordingly, in the event there are objections and hearing request, 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. The official rulemaking record is the paper record maintained at the Virginia address in Addresses at the beginning of this document.

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XI. 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, the Agency has 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 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: July 30, 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.C.C. 346a and 371

2. Section 180.1181 is added to read as follows:

§ 180.1181 Bacillus cereus strain BP01; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial plant regulator *Bacillus cereus* strain BP01 in or on cottonseed.

[FR Doc. 97–20561 Filed 8-1-97 ; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

Miscellaneous Amendments

AGENCY: Department of Health and Human Services, (HHS).

ACTION: Final rule.

SUMMARY: This final rule will remove appendixes I and J, which contain the text of Office Management and Budget (OMB) Circulars A–128 and A–133, from 45 CFR part 74. It will also update several items to conform them to the Federal Acquisition Streamlining Act of 1994 and correct a confusing statement which resulted from two typographical errors in that portion of OMB Circular A–110 upon which this statement is based.

EFFECTIVE DATE: This rule is effective September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202–690–6377; for the hearing impaired only: TDD 202–690–6415.

SUPPLEMENTARY INFORMATION: Pursuant to the President's Regulatory Reform Initiative, we have identified appendixes I and J of 45 CFR part 74 as unnecessary. These appendixes are being removed because they simply repeat the texts of Circulars A–133 (an out-of-date version of the Circular) and A–128 respectively. In addition, various references to appendixes I and J are also being removed.

Copies of Circulars A–128 and A–133 are widely available electronically; they may also be obtained from OMB and from the HHS Office of Grants Management.

We are also making the following non-substantive changes and corrections:

1. We are updating the definition of "small awards" in section 74.2 and changing "small purchase" threshold to "simplified acquisition" threshold everywhere that it appears. These actions are to conform these terms to the Federal Acquisition Streamlining Act of 1994 (FASA) (108 Stat. 3243).

2. We are correcting a confusing statement in 45 CFR 74.44(e) which resulted from two typographical errors in the equivalent paragraph OMB Circular A–110 upon which this statement is based. We are accomplishing this correction by removing the work "and," which had erroneously been included between the term "pre-award review" and the term "procurement documents," and adding an "s" to the work "request" in the term "request for proposals."

3. We are correcting an erroneous amendment to 45 CFR part 74's implementation of the Copeland "Anti-Kickback" Act (18 U.S.C. and 40 U.S.C. 276c) which was published in the final amendments of March 22, 1996 (61 FR 117147). (45 CFR part 74, appendix A)

Regulatory Impact Analyses

Executive Order 12866

This final rule was submitted to OMB.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and, by approving it, certifies that it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not include information collection requirements requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35).

Justification for Waiver of Proposed Rulemaking

As a matter of longstanding policy set forth at 36 FR 2532 (Feb. 5, 1971), the Department of Health and Human Services normally follows the notice of proposed rulemaking and public comment (NPRM) procedures set forth in the Administrative Procedure Act (APA), 5 U.S.C. 553, even when it is not required by the APA to do so. The APA, however, provides for an exception to the NPRM procedures when an agency finds that there is good cause for dispensing with such procedures on the grounds that they are impracticable, unnecessary or contrary to the public interest.

We find that the publication of this regulation in proposed form would be unnecessary and contrary to the public interest for the following reasons:

- This final rule removes from 45 CFR part 74 appendixes I and J, both of which are unnecessary since they simply repeat the language of OMB Circulars A–128 and A–133, which Circulars are referenced in the body of the regulation and otherwise readily available to the public. We conclude that public comment on this non-substantive change is unnecessary.
- Also, this regulation makes several non-substantive amendments to update the definition of the term "small award," and to change the term "small purchase" threshold to "simplified acquisition" threshold, which actions are to conform these terms to those in the Federal Acquisition Streamlining Act of 1994 (FASA). Although we are not specifically required by FASA to make these changes, FASA, along with previous acquisition acts, have generally been used to provide definitions for these terms. Since these changes merely reflect those which are required by law for contracts, we conclude that public comment on them would serve no useful purpose and is unnecessary.
- Further, this regulation corrects a confusing statement in 45 CFR 74.44(e), which resulted from two typographical errors in the equivalent portion of OMB Circular A–110 upon which it is based. It is our view that public comment on these minor, straightforward, non-substantive corrections is unnecessary and is contrary to public interest, since it would only delay making these helpful corrections.
- Finally, this regulation would also correct an erroneous amendment to 45 CFR part 74's implementation of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c), which we had published in the March 22, 1996 final amendments to 45 CFR part 74. (61 FR 11747). Since this is a non-substantive correction which is required for proper implementation of this provision, we find that public comment is unnecessary and is contrary to the public interest, since it would delay making this helpful correction.

List of Subjects in 45 CFR part 74

Accounting, Administrative practice and procedures, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: February 25, 1997.

Donna E. Shalala,

Secretary.

Accordingly, title 45, part 74, of the Code of Federal Regulations is amended as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (58 FR 62992, November 29, 1993).

2. The table of contents is amended by removing appendixes I and J.

§ 74.2 [Amended]

3. In section 74.2 the definition of "Small awards" is amended by removing the words "small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000)" and adding, in their place, the words "simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000)".

§ 74.26 [Amended]

4. Section 74.26(a) is amended by removing the words "(See appendix I to this part.)".

5. Section 74.26(c) is amended by removing the words "(See appendix J to this part.)".

6. Section 74.44 is amended by revision paragraph (e) to read as follows:

§ 74.44 Procurement procedures.

* * * * *

(e) Recipients shall, on request, make available for HHS awarding agency pre-award review, procurement documents such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

* * * * *

§§ 74.44, 74.46, 74.48, and appendix A paragraph 8 [Amended]

7. Remove the words "small purchase threshold" and add, in their place, the words "simplified acquisition threshold" in the following places:

a. Section 74.44(e)(3), (e)(4), and (e)(5);

b. Section 74.46;

c. Section 74.48(a) and (d); and

d. Appendix A, paragraph 8.

Appendix A To Part 74 [Amended]

8. Paragraph 2 of appendix A is amended by removing the amount "$100,000" and adding, in its place, the amount "$2,000".

Appendix I To Part 74 [Removed]

9. Appendix I is removed.

Appendix J To Part 74 [Removed]

10. 10. Appendix J is removed.

[FR Doc. 97–20402 Filed 8–1–97; 8:45 am]
BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket 95–19; FCC 97–240]

Equipment Authorization for Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order*, the Commission responds to three Petitions for Reconsideration filed by the Information Technology Industry Council (ITI), Hewlett-Packard Company (HP), and Intel Corporation (Intel) regarding the Declaration of Conformity (DoC) procedure for the authorization of digital devices. This action is intended to clarify and improve the DoC process.

DATES: Effective September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Engineering and Technology, Anthony Serafini at (202) 418–2456 or Neal McNeil (202) 418–2408.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket 95–19, FCC 97–240, adopted July 3, 1997 and released July 18, 1997. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

1. In the *Report and Order*, of this proceeding, 61 FR 31044, June 19, 1996, the Commission adopted rules to streamline the equipment authorization requirements for personal computers and personal computer peripherals. Specifically, the Commission established the DoC procedure which allows digital devices to be authorized based on a manufacturer's or supplier's declaration that the device complies with the FCC requirements for controlling radio frequency interference. The DoC procedure requires laboratories performing compliance testing to be accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) developed by the National Institute of Standards and Technology (NIST) or by the American Association for Laboratory Accreditation (A2LA). In the *Report and Order*, the Commission delegated to the Chief of the Office of Engineering and Technology authority to recognize additional accrediting organizations and to make determinations regarding the continued acceptability of individual accrediting organizations and accredited laboratories. Further, in the interest of fair trade the rules specify that laboratories located outside of the United States or its possessions will be accredited only if there is a mutual recognition agreement (MRA) between that country and the United States that permits similar accreditation of U.S. facilities to perform testing for products marketed in that country.

2. The *Report and Order* also adopted rules to permit the marketing, without further testing, of personal computers assembled from separate components that have themselves been authorized under a DoC. The Commission found that this approach would provide both flexibility for manufacturers and system integrators and adequate assurance that such modular computers will comply with the FCC technical standards. Testing procedures were adopted for CPU boards and power supplies. However, due to the difficulties associated with determining the shielding effectiveness of enclosures, the Commission did not adopt rules to authorize enclosures. To ensure that systems assembled from modular components would comply with the technical standards, the Commission adopted a two step test procedure for authorizing CPU boards. The CPU board must first be tested installed in a typical enclosure but with the enclosure's cover removed so that the internal circuitry is exposed at the top and at least two sides. Additional components, including a power supply, peripheral devices, and subassemblies, shall be added, as needed, to result in a complete personal computer system. Under this test, radiated emissions from the system under test may be no more than 3 dB above the limits specified in section 15.109 of this chapter. If the initial test demonstrates that the system is within 3 dB of the limits, a second test is performed using the same configuration but with the cover installed on the enclosure. Under the latter test conditions, the system under test shall not exceed the radiated emission limits specified in section 15.109 of this chapter. If, however, the initial test demonstrates compliance with the radiated emission standards in section 15.109 of this chapter, the second test is not required to be performed. The system must also be tested to comply with the AC power line conducted limits specified in section 15.107 of this chapter in accordance with the procedures specified in section 15.31 of this chapter.

3. On July 16, 1996, the Commission's Office of Engineering and Technology (OET) issued a Public Notice taking steps to encourage the use of the new DoC procedure. The Public Notice addressed concerns that use of the DoC procedure would be hindered by the ability of NVLAP and A2LA to timely process the initial demand for accreditation by adopting a provisional transition period of one year for obtaining such accreditation. The Public Notice also addressed issues concerning the recognition of accreditors located outside of the United States. A laboratory would be permitted to submit documentation to OET's Equipment Authorization Division stating that it has filed an application for accreditation with an approved laboratory accreditation body and provide evidence that it meets all aspects of ISO/IEC Guide 25. Such labs will be provisionally accepted by the FCC for a period of one year, until August 19, 1997, or until the application for accreditation has been acted upon, whichever is sooner. A laboratory that is denied accreditation by an approved accreditation body will lose its provisional acceptance. However, any DoCs that were issued will remain valid.

4. Petitions for Reconsideration were filed on July 19, 1996, by the ITI, HP, and Intel. ITI requests reconsideration of the laboratory accreditation requirement for manufacturers' and foreign test laboratories to use the new DoC procedure. ITI feels that manufacturers' laboratories should not be required to be accredited before using the DoC process. Additionally, ITI argues that the accreditation requirement should not apply to foreign trading partners in countries that currently do not have similar accreditation requirements. The Commission believes that laboratory accreditation is a vital component of the DoC procedure and denies the ITI Petition for Reconsideration. HP requests reconsideration or clarification of the rules regarding use of the DoC procedure by laboratories outside the United States. HP feels that the mutual recognition agreement (MRA) requirement unreasonably discriminates against test labs located in foreign countries. The Commission finds that the rules do not adequately address the requirements for foreign laboratories

and grants the HP Petition by clarifying the requirements and incorporating into the rules the July 16, 1996, public notice entitled, "OET Takes Steps to Encourage Self-Declaration for Computer Compliance" (public notice). Intel requests reconsideration of the testing procedure for the authorization of CPU boards to either take into account the shielding effectiveness of enclosures or to disregard emissions from peripheral devices. The Commission agrees that emissions from peripheral devices should not adversely impact the testing of CPU boards and grants, in part, the Intel Petition for Reconsideration. Finally, the Commission amends the rules in several respects on its own motion.

5. Accordingly, *It is ordered* that the petition for reconsideration filed by Information Technology Industry Council is denied. The petition for reconsideration filed by Hewlett-Packard Company is granted. The petition for reconsideration filed by Intel Corporation is granted as described above and denied in all other respects. Finally, it is ordered that part 15 of the Commission's rules and regulations is amended as specified below effective September 17, 1997. This action is taken pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304, 307 and 405 of the Communications Act of 1934 as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307 and 405.

Final Regulatory Flexibility Certification

6. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in ET 95–19, FCC No. 95–46, 60 FR 15116, March 22, 1995. The Commission sought written comments on the proposals in the *NPRM* including the IRFA. No commenting parties raised issues specifically in response to the IRFA and a Final Regulatory Flexibility Analysis (FRFA) was included in the *Report and Order* in this proceeding. The rules adopted in this *Memorandum Opinion and Order* (MO&O) provide clarification and further relaxation of the computer authorization process requirements adopted in the *Report and Order*. We therefore certify pursuant to section 605(b) of the RFA that the rules adopted in this *MO&O* do not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of this final certification, along with *MO&O*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. § 605(b).

List of Subjects

47 CFR Part 2

Reporting and recordkeeping requirements.

47 CFR Part 15

Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47 of the Code of Federal Regulations, Parts 2 and 15 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

1. Section 2.909 is amended by redesignating paragraph (c)(3) to (c)(4) and by adding a new paragraph (c)(3), to read as follows:

§ 2.909 Responsible party.

* * * * *

(c) * * *

(3) Retailers or original equipment manufacturers may enter into an agreement with the responsible party designated in paragraph (c)(1) or (c)(2) of this section to assume the responsibilities to ensure compliance of equipment and become the new responsible party.

* * * * *

2. Section 2.948 is amended by removing the note at the end of paragraph (d) and by adding paragraphs (d)(1), (d)(2) and (d)(3) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(d) * * *

(1) In addition to meeting the above requirements, the accreditations of laboratories located outside of the United States or its possessions will be acceptable only under one of the following conditions:

(i) If there is a mutual recognition agreement between that country and the United States and that laboratory is covered by the agreement;

(ii) If there is an agreement between accrediting bodies that permits similar accreditation of U.S. facilities to perform testing for products marketed in that country; or

(iii) If the country already accepts the accreditation of U.S. laboratories.

(2) Organizations outside of the United States that seek to become accreditors may seek agreements with approved United States accrediting bodies to mutually recognize the accreditation of laboratories. The Commission will review such agreements and will consult with the Office of the United States Trade Representative and other Executive Branch agencies before accepting them for purposes of the DoC procedure in order to ensure that the respective foreign countries accept United States accreditations and do not impose additional barriers upon United States companies. Accrediting bodies located outside of the United States will only be permitted to accredit laboratories within their own country for DoC testing.

(3) To facilitate use of the DoC procedure, the FCC will accept a laboratory that submits documentation to OET's Equipment Authorization Division stating that it has filed an application for accreditation with an approved laboratory accreditation body and provides evidence that it meets all aspects of ISO/IEC Guide 25. Such labs will be provisionally accepted by the FCC for a period of one year (until August 19, 1997) or until the application for accreditation has been acted upon, whichever is sooner. A laboratory that is denied accreditation by an approved accreditation body will lose its provisional acceptance. However, any DoCs that were issued will remain valid.

3. Section 2.1077 is amended by redesignating paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) to (b)(2), (b)(3), (b)(4), and (b)(5) respectively and by adding a new paragraph (b)(1) to read as follows:

2.1077 Compliance information.

* * * * *

(b) * * *

(1) Identification of the assembled product, e.g., name and model number.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

1. Section 15.19 is amended by revising paragraph (b)(1)(ii) to read as follows, redesignating paragraphs (b)(2) and (b)(3) to (b)(3) and (b)(4) respectively and adding a new paragraph (b)(2) to read as follows:

§ 15.19 Labelling requirements.

* * * * *

(b) * * *

(1) * * *

(ii) If a personal computer is authorized based on assembly using separately authorized components, in accordance with § 15.101(c)(2) or (c)(3), and the resulting product is not separately tested:

* * * * *

(2) Label text and information should be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and the label. However, the type size for the text is not required to be larger than eight point.

* * * * *

2. Section 15.31 is amended by revising the first sentence of paragraph (a)(6) and paragraph (b), to read as follows:

§ 15.31 Measurement standards.

(a) * * *

* * * * *

(6) Digital devices authorized by verification, Declaration of Conformity, or for which an application for equipment authorization is filed on or after May 1, 1994, and intentional and other unintentional radiators for which verification is obtained, or for which an application for equipment authorization is filed on or after June 1, 1995 are to be measured for compliance using the following procedure excluding section 5.7, section 9 and section 14: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronic Engineers, Inc. on July 17, 1992 as document number SH15180. * * *

* * * * *

(b) All parties making compliance measurements on equipment subject to the requirements of this part are urged to use these measurement procedures. Any party using other procedures should ensure that such other procedures can be relied on to produce measurement results compatible with the FCC measurement procedures. The description of the measurement procedure used in testing the equipment for compliance and a list of the test equipment actually employed shall be made part of an application for certification or included with the data required to be retained by the party responsible for devices authorized pursuant to a Declaration of Conformity or devices subject to notification or verification.

* * * * *

3. Section 15.32 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 15.32 Test procedures for CPU boards and computer power supplies.

* * * * *

(a) * * *

(1) Testing for radiated emissions shall be performed with the CPU board installed in a typical enclosure but with the enclosure's cover removed so that the internal circuitry is exposed at the top and on at least two sides. Additional components, including a power supply, peripheral devices, and subassemblies, shall be added, as needed, to result in a complete personal computer system. If the oscillator and the microprocessor circuits are contained on separate circuit boards, both boards, typical of the combination that would normally be employed, must be used in the test. Testing shall be in accordance with the procedures specified in § 15.31.

(i) Under these test conditions, the system under test shall not exceed the radiated emission limits specified in § 15.109 by more than 6 dB. Emissions greater than 6 dB that can be identified and documented to originate from a component(s) other than the CPU board being tested, may be dismissed.

(ii) Unless the test in paragraph (a)(1)(i) of this section demonstrates compliance with the limits in § 15.109, a second test shall be performed using the same configuration described above but with the cover installed on the enclosure. Testing shall be in accordance with the procedures specified in § 15.31. Under these test conditions, the system under test shall not exceed the radiated emission limits specified in § 15.109.

(2) In lieu of the procedure in (a)(1) of this section, CPU boards may be tested to demonstrate compliance with the limits in § 15.109 using a specified enclosure with the cover installed. Testing for radiated emissions shall be performed with the CPU board installed in a typical system configuration. Additional components, including a power supply, peripheral devices, and subassemblies, shall be added, as needed, to result in a complete personal computer system. If the oscillator and the microprocessor circuits are contained on separate circuit boards, both boards, typical of the combination that would normally be employed, must be used in the test. Testing shall be in accordance with the procedures specified in § 15.31. Under this procedure, CPU boards that comply with the limits in § 15.109 must be marketed together with the specific enclosure used for the test.

* * * * *

4. Section 15.101 is amended by revising the table in paragraph (a) to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) * * *

Type of device	Equipment authorization required
TV broadcast receiver	Verification.
FM broadcast receiver	Verification.
CB receiver	Certification.
Superregenerative receiver	Certification.
Scanning receiver	Certification.
All other receivers subject to Part 15	Notification.
TV interface device	Certification.
Cable system terminal device	Notification.
Stand-alone cable input selector switch	Verification.
Class B personal computers and peripherals	Declaration of Conformity or Cerification.
CPU boards and internal power supplies used with Class B personal computers	Declaration of Conformity or Certification.
Class B personal computers assembled using authorized CPU boards or power supplies	Declaration of Conformity.
Class B external switching power supplies	Verification

Type of device	Equipment authorization required
Other Class B digital devices & peripherals	Verification.
Class A digital devices, peripherals & external switching power supplies	Verification.
All other devices	Verification.

* * * * *

[FR Doc. 97–20398 Filed 8–1–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 96–130; Notice 03]

RIN 2127–AG56

Insurer Reporting Requirements; List of Insurers Required To File Reports; Correction

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

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the final regulation [Docket No. 96–130; Notice 03], which was published Monday, June 23, 1997, (62 FR 33754). The regulation related to the information reporting requirements for passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences, pursuant to 49 U.S.C. 33112.

EFFECTIVE DATE: June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Correction of Publication

Accordingly, the publication on June 23, 1997, (62 FR 33754) of this final regulation [Docket No. 96–130; Notice 03], which were the subject of FR Doc. 97–16334, is corrected as follows:

PART 544—CORRECTED

Paragraph 1. On page 33756, in the first column, in the words of issuance, remove the words "proposed to be".

Paragraph 1. On page 33756, in amendatory instruction 1, the words "would be revised to read as follows" are corrected to read "continues to read as follows".

Paragraph 2. On page 33756, in the amendatory instructions 2, 3, 4, 6, and 7, the words "would be revised to read as follows" are corrected to read "is revised to read as follows".

Dated as signed: July 29, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–20478 Filed 8–1–97; 8:45 am]
BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 62, No. 149
Monday, August 4, 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.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1724

RIN 0572–AA48

Electric Engineering, Architectural Services and Design Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on engineering and architectural services. These policies and procedures are presently contained in seven RUS bulletins, which will be rescinded after this regulation becomes effective. This proposed rule would simplify and codify RUS policy and procedures to be followed by electric borrowers relating to architectural and engineering services. It would also simplify and codify RUS requirements for the planning and design of electric distribution, transmission, and generation systems and facilities owned by RUS borrowers.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than October 3, 1997.

ADDRESSES: Submit written comments to George J. Bagnall, Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. RUS requires an original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection at room 4034–S, between 8:30 a.m. and 5:00 p.m. on official workdays.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1398. FAX: (202) 720–7491. E-mail: fgatchel@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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 (OMB).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and therefore, the Regulatory Flexibility Act does not apply to this proposed rule.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this proposed action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded From Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this order.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards in Section 3 of the Executive Order.

National Performance Review

The regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comment on this information collection must be received by October 3, 1997.

Comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed 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.

For further information contact F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120. E-mail: mheppe@rus.usda.gov.

Title: 7 CFR Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

Type of request: New information collection.

Abstract: This proposed rule requires borrowers to use three RUS contract forms under certain circumstances. The use of standard forms helps assure RUS that:

- Appropriate standards and specifications are maintained;
- RUS loan security is not adversely affected; and
- Loan and loan guarantee funds are used effectively and for the intended purpose.

Standardization of forms by RUS results in substantial savings to:

• Borrowers—If standard forms were not used, borrowers would need to prepare their own documents at significant expense; and

• Government—If standard forms were not used, each document submitted by a borrower would require extensive and costly review by both RUS and the Office of General Counsel.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Businesses, including not for profit cooperatives and others.

Estimated number of respondents each year: 153.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 153 hours.

Copies of this information collection can be obtained from Daphne Brown, Program Support and Regulatory Analysis, Rural Utilities Service. Phone: (202) 205–3660.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**.

All comments will become a matter of public record.

Background

RUS has established regulations pertaining to the design and construction of RUS electric borrower's systems. These regulations are contained in 7 CFR chapter XVII. Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures, which describes policies and procedures pertaining to RUS electric borrower procurement of architectural and engineering services for planning, design, and construction management of buildings and electric utility plant such as distribution and transmission lines, substations, communications and control systems, and generating plants.

The policies and procedures covered by this proposed action are presently contained in RUS Bulletins 41–1, Engineering Services for Electric Borrowers; 42–1, Architectural Services for Electric Borrowers; 60–1, Standards for the Preparation of Circuit Diagrams, Electrical Data Sheets, and Other Drawings for Systems of Electrical Borrowers; 60–2, Electric System Capacity; 80–11, Reports of Progress of Construction and Engineering Services; 81–9, Preparation of Plans and Specifications for Distribution and Transmission Facilities; and 86–2, Pre-Construction Activities for Headquarters Facilities for Electric Borrowers. The previous policies and procedures are being changed and updated by this proposed rule. When this rule is effective, RUS Bulletins 41–1, 42–1, 60–1, 60–2, 80–11, 81–9, and 86–2 will be superseded and rescinded.

The major substantive proposed changes are as follows:

(a) This proposal eliminates the requirement for RUS approval of the borrower's selection of the architect and of the engineer.

(b) This proposal eliminates the requirement for RUS approval of architectural services contracts and distribution and transmission engineering services contracts for all facilities, and generation engineering services contracts if the facilities are not financed by RUS.

(c) This proposal eliminates the requirement for RUS approval for closeout of architectural or engineering services contracts.

(d) This proposal eliminates the requirement for submittal of progress reports to RUS for facilities not financed by RUS.

(e) This proposal eliminates the requirement for RUS approval of many plans and specifications. However, many requirements, such as the National Electrical Safety Code (NESC), Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), building accessibility standards, RUS standards, specifications, and use of acceptable materials, etc., apply regardless of RUS involvement.

(f) Design data that have been approved by RUS may be used for new facilities without further approval.

(g) This proposal will simplify and clarify RUS requirements regarding system design.

(h) This proposal combines seven bulletins and three contracting forms into one document.

List of Subjects in 7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, RUS proposes to amend 7 CFR chapter XVII by revising Part 1724 to read as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

Subpart A—General

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

§ 1724.1 Introduction.

(a) The policies, procedures and requirements in this part implement certain provisions of the standard form

of loan documents between the Rural Utilities Service (RUS) and its electric borrowers.

(b) All borrowers, regardless of the source of funding, must comply with RUS' requirements with respect to design, construction standards, and the use of RUS accepted material on their electric systems.

(c) Borrowers are required to use RUS contract forms only if the facilities are financed by RUS.

(d) If financing in whole or part is not provided by RUS, borrowers are nevertheless encouraged to use the RUS contract forms for construction, material, equipment, engineering services, and architectural services.

§ 1724.2 Waivers and special requirements.

The Administrator may waive, for good cause on a case-by-case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, and other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

§ 1724.3 Definitions.

Terms used in this part have the meanings set forth in § 1710.2 of this chapter. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in § 1710.2 of this chapter, the following terms have the following meanings for the purposes of this part:

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Force account construction means construction performed by the borrower's employees.

Repowering means replacement of the steam generator or the prime mover or both at a generating plant.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given orally followed by a confirming letter.

RUS financed means financed or funded wholly or in part by a loan made or guaranteed by RUS, including concurrent supplemental loans required by § 1710.110 of this chapter, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

§ 1724.4 Qualifications.

The borrower must ensure that:

(a) All selected architects and engineers meet the applicable registration and licensing requirements of the State(s) in which the facilities will be located;

(b) All selected architects and engineers are familiar with RUS standards and requirements; and

(c) All selected architects and engineers have had satisfactory experience with comparable work.

§ 1724.5 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS (See part 1700 of this chapter).

(b) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B and C of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by a certified copy of the board resolution awarding the contract.

(c) *Contract amendments requiring RUS approval.* The borrower must submit to RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval. Each contract amendment submittal to RUS must be accompanied by a certified copy of the board resolution approving the amendment.

§ 1724.6 Insurance requirements.

(a) Borrowers must ensure that all architects and engineers working under contract with the borrower have insurance coverage as required by part 1788 of this chapter.

(b) Borrowers must also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than $1 million.

§ 1724.7 Debarment and suspension.

Borrowers must comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

§ 1724.8 Restrictions on lobbying.

Borrowers must comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1724.9 Environmental compliance.

Borrowers must comply with the requirements of Part 1794, Environmental Policies and Procedures for Electric and Telephone Borrowers, of this chapter.

§§ 1724.10—1724.19 [Reserved]

Subpart B—Architectural Services

§ 1724.20 Borrowers' requirements—architectural services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower must select a qualified architect to perform the architectural services required for the design and construction management of headquarters facilities. The selection of the architect is not subject to RUS approval unless specifically required by RUS on a case by case basis. Architect's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(b) The architect retained by the borrower shall not be an employee of the building supplier or contractor, except in cases where the building is prefabricated and pre-engineered.

(c) The architect's duties are those specified under the Architectural Services Contract and under subpart E of this part, and, as applicable, those duties assigned to the "engineer" for competitive procurement procedures in part 1726 of this chapter.

(d) If the facilities are RUS financed, the borrower must submit or require the architect to submit one copy of each construction progress report to RUS upon request.

(e) Additional information concerning RUS requirements for electric borrowers' headquarters facilities are set forth in subpart E of this part. See also RUS Bulletin 1724E–400, Guide to Presentation of Building Plans and

Specifications, for additional guidance. This bulletin is available from Program Support and Regulatory Analysis Staff, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

§ 1724.21 Architectural services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS Form 220, Architectural Services Contract, must be used by electric borrowers when obtaining architectural services.

(b) The borrower must ensure that the architect furnishes or obtains all architectural services related to the design and construction management of the facilities.

(c) Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Such changes shall not relieve the architect or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. Borrowers should obtain legal assistance to ensure that the contracts are properly prepared and executed. Any substantive changes must be approved by RUS prior to execution of the contract.

(d) Architectural services contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(e) Closeout. Upon completion of all services and obligations required under each architectural services contract, including, but not limited to, submission of final documents, the borrower must closeout that contract. The borrower must obtain from the architect a final statement of cost, which must be supported by detailed information as appropriate. For example, out-of-pocket expense and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation. RUS Form 284, Final Statement of Cost for Architectural Service, may be used. All computations of the compensation must be made in accordance with the terms of the architectural services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1724.22—1724.29 [Reserved]

Subpart C—Engineering Services

§ 1724.30 Borrowers' requirements—engineering services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower must select one or more qualified persons to perform the engineering services involved in the planning, design, and construction management of the system.

(b) Each borrower shall retain or employ one or more qualified engineers to inspect and certify all new construction in accordance with § 1724.32. The engineer must not be the borrower's manager.

(c) The selection of the engineer is not subject to RUS approval unless specifically required by RUS on a case by case basis. Engineer's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(d) The engineer's duties are specified under the Engineering Services Contract and under part 1726 of this chapter. The borrower must ensure that the engineer executes all certificates and other instruments pertaining to the engineering details required by RUS.

(e) Additional requirements related to appropriate seismic safety measures are contained in Part 1792, Subpart C, Seismic Safety of Federally Assisted New Building Construction, of this chapter.

(f) If the facilities are RUS financed, the borrower must submit or require the engineer to submit one copy of each construction progress report to RUS upon request.

§ 1724.31 Engineering services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS contract forms for engineering services must be used. Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Any such changes shall not relieve the engineer or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. Borrowers should obtain legal assistance to ensure that the contracts are properly prepared and executed. Any substantive changes to the RUS contract form must be approved by RUS prior to execution of the contract.

(b) RUS Form 236, Engineering Service Contract—Electric System Design and Construction, must be used for all distribution, transmission, substation, and communications and control facilities. These contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) RUS Form 211, Engineering Service Contract for the Design and Construction of a Generating Plant, must be used for all new generating units and repowering of existing units. These contracts require RUS approval.

(d) Any amendments to RUS approved engineering services contracts require RUS approval.

(e) Closeout. Upon completion of all services and obligations required under each engineering services contract, including, but not limited to, submission of final documents, the borrower must closeout the contract. The borrower must obtain from the engineer a completed final statement of engineering fees, which must be supported by detailed information as appropriate. RUS Form 234, Final Statement of Engineering Fee, may be used. All computations of the compensation must be made in accordance with the terms of the engineering services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1724.32 Inspection and certification of work order construction.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) The borrower must ensure that all field inspection and related services are performed within 6 months of the completion of construction, and are performed by a licensed engineer, except that a subordinate of the licensed engineer may make the inspection, provided the following conditions are met:

(1) The inspection by the subordinate is satisfactory to the borrower;

(2) This practice is acceptable under applicable requirements of the State(s) in which the facilities are located;

(3) The subordinate is experienced in making such inspections;

(4) The name of the person making the inspection is included in the certification; and

(5) The licensed engineer signs such certification which appears on the inventory of work orders.

(b) The inspection must include a representative and sufficient amount of construction listed on each RUS Form 219, Inventory of Work Orders, being inspected to assure the engineer that the

construction is acceptable. Each work order that was field inspected shall be noted and initialed by the engineer on RUS Form 219. The inspection services shall include, but not be limited to, the following:

(1) Determination that construction conforms to RUS specifications and standards and to the requirements of the National Electrical Safety Code (NESC), State codes, and local codes;

(2) Determination that the staking sheets represent the construction completed and inspected;

(3) Preparation of a list of construction clean-up notes and staking sheet discrepancies to be furnished to the owner to permit correction of construction, staking sheets, other records, and work order inventories;

(4) Reinspection of construction corrected as a result of the engineer's report;

(5) Noting, initialing, and dating the staking or structure sheets and initialing the corresponding work order entry for line construction; and

(6) Noting, initialing, and dating the "as constructed" drawings or sketches for generating plants, substations, and other major facilities.

(c) *Certification.* (1) The following certification must appear on all inventories of work orders:

> I hereby certify that sufficient inspection has been made of the construction reported by this inventory to give me reasonable assurance that the construction complies with applicable specifications and standards and meets appropriate code requirements as to strength and safety. This certification is in accordance with acceptable engineering practice.

(2) A certification must also include the name of the inspector, name of the firm, signature of the licensed engineer, the engineer's State license number, and the date of signature.

§§ 1724.33—1724.39 [Reserved]

Subpart D—Electric System Planning

§ 1724.40 General.

Borrowers must have ongoing, integrated planning to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements for their electric systems. The primary components of the planning system consist of long-range engineering plans and construction work plans. Long-range engineering plans identify plant investments required over a long-range period, usually 10 years or more. Construction work plans specify and document plant requirements for a shorter term, usually 2 to 4 years. Long-range engineering plans and construction work plans must be in accordance with part 1710, subpart F, of this chapter. See also RUS Bulletins 1724D–101A, Electric System Long-Range Planning Guide, and 1724D–101B, System Planning Guide, Construction Work Plans, for additional guidance. This bulletin is available from Program Support and Regulatory Analysis Staff, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

§§ 1724.41—1724.49 [Reserved]

Subpart E—Electric System Design

§ 1724.50 Compliance with National Electrical Safety Code (NESC)

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) A borrower must ensure that its electric system, including all electric distribution, transmission, and generating facilities, is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the National Electrical Safety Code (NESC) and all applicable and current electrical and safety requirements of any State or local governmental entity. Copies of the NESC may be obtained from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, NY 10017–2394. This requirement applies to the borrower's electric system regardless of the source of financing.

(b) Any electrical standard requirements established by RUS are in addition to, and not in substitution for or a modification of, the most current and accepted criteria of the NESC and any applicable electrical or safety requirements of any State or local governmental entity.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B and C.

Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

§ 1724.51 Design requirements.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Distribution.* All distribution facilities must conform to the applicable RUS construction standards and utilize RUS accepted materials.

(b) *Transmission lines.* (1) All transmission line design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, transmission line design data summary, general description of terrain, right-of-way calculations, discussion concerning conductor and structure selection, conductor sag and tension information, design clearances, span limitations due to clearances, galloping or conductor separation, design loads, structure strength limitations, insulator selection and design, guying requirements, and vibration considerations. For lines composed of steel or concrete poles, or steel towers, in which load information will be used to purchase the structures, the design data shall also include loading trees, structure configuration and selection, and a discussion concerning foundation selection.

(3) Line design data for uprating transmission lines to higher voltage levels or capacity must be approved by RUS.

(4) Transmission line design data which has received RUS approval in connection with a previous transmission line construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(c) *Substations.* (1) All substation design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, a discussion of site considerations, oil spill prevention measures, design considerations covering voltage, capacity, shielding, clearances, number of low and high voltage phases, major equipment, foundation design parameters, design loads for line support structures and the control house, seismic considerations, corrosion, grounding, protective relaying, and AC and DC auxiliary systems. Reference to applicable safety codes and construction standards are also to be included.

(3) Substation design data which has received RUS approval in connection with a previous substation construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(d) *Generating facilities.* (1) This section covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (e) of this section. Generation plant buildings must meet the requirements of paragraph (e)(1) of this section, as applicable.

(2) For all new generation units and for all repowering projects, the design outline must be approved by RUS, unless RUS determines that a design outline is not needed for a particular project.

(3) The design outline will generally include all significant design criteria. During the early stages of the project, RUS will, in consultation with the borrower and its consulting engineer, identify the specific items which are to be included in the design outline.

(e) *Headquarters.* (1) Applicable laws. The design and construction of headquarters facilities must comply with all applicable Federal, State, and local laws and regulations, including, but not limited to:

(i) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which states that no qualified individuals with handicaps shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, appendix A) are the applicable standards for all new or altered borrower buildings, regardless of the source of funding.

(ii) The Architectural Barriers Act of 1968 (42 U.S.C. 4151), which ensures that buildings financed with Federal funds are designed and constructed to be accessible to the physically handicapped.

(iii) The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., p. 269). Appropriate seismic safety provisions are required for new buildings for which RUS provides financial assistance. (See part 1792, subpart C, of this chapter).

(2) The borrower must provide evidence, satisfactory in form and substance to the Administrator, that each building will be designed and built in compliance with all Federal, State, and local requirements.

(f) *Communications and control.* (1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The performance considerations for a new or replacement master system must be approved by RUS. A master system includes the main controller and related equipment at the main control point. Performance considerations include all major system features and their justification, including, but not limited to, the objectives of the system, the types of parameters to be controlled or monitored, the communication media, alternatives considered, and provisions for future needs.

§ 1724.52 Permitted deviations from RUS construction standards.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Structures for raptor protection.* (1) RUS standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large raptors to protect such birds from electric shock due to physical contact with energized wires. Where raptor protection in the design of overhead line structures is required by RUS; a Federal, State or local authority with permit or license authority over the proposed construction; or where the borrower voluntarily elects to comply with the recommendations of the U.S. Fish and Wildlife Service or State wildlife agency, borrowers are permitted to deviate from RUS construction standards, provided:

(i) Structures are designed and constructed in accordance with "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996" (Suggested Practices for Raptor Protection); and

(ii) Structures are in accordance with the NESC and applicable State and local regulations.

(2) Any deviation from the RUS construction standards for the purpose of raptor protection, which is not in accordance with the Suggested Practices for Raptor Protection, must be approved by RUS prior to construction. "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996," published by the Edison Electric Institute/Raptor Research Foundation, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the Raptor Research Foundation, Inc., c/o Jim Fitzpatrick, Treasurer, Carpenter Nature Center, 12805 St. Croix Trail South, Hastings, Minnesota 55033. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the RUS standard transformer secondary neutral connections may be modified in accordance with Rule 97D2 of the NESC.

(c) *Lowering of neutral conductor on overhead distribution lines.* (1) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an *additional* distance not exceeding 2 feet (0.6 m) for the purpose of economically meeting the clearance requirements of the NESC.

(2) It is permissible to lower the transformer and associated neutral attachment up to 2 feet (0.6 m) to provide adequate clearance between the cutouts and single-phase, conventional distribution transformers.

(3) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an *additional* distance of up to 6 feet (2 m) for the purpose of performing construction and future line maintenance on these assemblies from bucket trucks designed for such work.

§ 1724.53 Preparation of plans and specifications.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *General.* (1) The borrower (acting through the engineer, if applicable) shall prepare plans and specifications that adequately represent the construction to be performed.

(2) Plans and specifications for distribution, transmission, or generating facilities must be based on a construction work plan, amended construction work plan, engineering study or construction program which have been approved by RUS if financing

for the facilities will at any time be requested from RUS.

(b) *Composition of plans and specifications package.* (1) Whether built by force account or contract, each set of plans and specifications must include:

(i) *Distribution lines.* Specifications and drawings, staking sheets, key map and appropriate detail maps;

(ii) *Transmission lines.* Specifications and drawings, transmission line design data manual, vicinity maps of the project, a one-line diagram, and plan and profile sheets;

(iii) *Substations.* Specifications and drawings, including a one-line diagram, plot and foundation plan, grounding plan, and plans and elevations of structure and equipment, as well as all other necessary construction drawings, in sufficient detail to show phase spacing and ground clearances of live parts;

(iv) *Headquarters.* Specifications and drawings, including:

(A) A plot plan showing the location of the proposed building plus paving and site development;

(B) A one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown; and

(C) An outline specification including materials to be used (type of frame, exterior finish, foundation, insulation, etc.); and

(v) *Other facilities (e.g., generation and communications and control facilities).* Specifications and drawings, as necessary and in sufficient detail to accurately define the scope and quality of work required.

(2) For contract work, the appropriate standard RUS construction contract form shall be used as required by part 1726 of this chapter.

§ 1724.54 Requirements for RUS approval of plans and specifications.

The provisions of this section apply only to RUS financed electric system facilities.

(a) For any contract subject to RUS approval in accordance with part 1726 of this chapter, the borrower must obtain RUS approval of the plans and specifications, as part of the proposed bid package, prior to requesting bids. RUS may require approval of other plans and specifications on a case by case basis.

(b) *Distribution lines.* RUS approval of the plans and specifications for distribution line construction is not required if standard RUS drawings, specifications, RUS accepted material, and standard RUS contract forms (as required by part 1726 of this chapter) are used. Drawings, plans and specifications for nonstandard distribution construction must be submitted to RUS and receive approval prior to requesting bids on contracts or commencement of force account construction.

(c) *Transmission lines.* (1) Plans and specifications for transmission construction projects which are not based on RUS approved line design data or do not use RUS standard structures must receive RUS approval prior to requesting bids on contracts or commencement of force account construction.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for transmission construction which use previously approved design data and standard structures do not require RUS approval. Plans and specifications for related work, such as right-of-way clearing, equipment, and materials, do not require RUS approval unless required by paragraph (a) of this section.

(d) *Substations.* (1)(i) Plans and specifications for all new substations must receive RUS approval prior to requesting bids on contracts or commencement of force account construction, unless:

(A) The substation design has been previously approved by RUS; and

(B) No significant NESC revisions have occurred.

(ii) The borrower shall notify RUS in writing that a previously approved design will be used, including identification of the previously approved design.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for substation modifications and for substations using previously approved designs do not require RUS approval.

(e) *Generation facilities.* (1) This paragraph (e) covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (f) of this section.

(2) The borrower must obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) *Headquarters buildings.* (1) This paragraph (f) covers office buildings, warehouses, and equipment service buildings. Generating plant buildings are covered under paragraph (e) of this section.

(2) The borrower must obtain RUS approval of the plans and specifications for all headquarters buildings prior to issuing invitations to bid. The borrower must also submit two copies of RUS Form 740g, Application for Headquarters Facilities. The application must show surface area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities. This form is available from Program Support and Regulatory Analysis Staff, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

(g) *Communications and control facilities.* (1) This paragraph covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The borrower must obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

(h) Terms and conditions include the RUS standard form of contract, general and special conditions, and any other non-technical provisions of the contract. Terms and conditions which have received RUS approval in connection with a previous contract for a particular borrower are considered approved by RUS for that borrower.

§ 1724.55 Dam safety.

(a) The provisions of this section apply only to RUS financed electric system facilities.

(1)(i) Any borrower that owns or operates a RUS financed dam must utilize the "Federal Guidelines for Dam Safety," (Guidelines), as applicable. A dam, as more fully defined in the Guidelines, is generally any artificial barrier which either:

(A) Is 25 feet (8 m) or more in height; or

(B) Has an impounding capacity at maximum water storage elevation of 55 acre-feet (68,000 m^3) or more.

(ii) The "Federal Guidelines for Dam Safety," FEMA 93, June 1979, published by the Federal Emergency Management Agency (FEMA), is hereby incorporated by reference. This incorporation by

reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "Federal Guidelines for Dam Safety" may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, P.O. Box 2012, Jessup, MD 20794. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(2) The borrower shall evaluate the hazard potential of its dam(s) in accordance with Appendix E of the U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, July 31, 1995. A summary of the hazard potential criteria is included for information as Appendix A to this subpart. The U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, July 31, 1995, published by the United States Army Corps of Engineers, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program may be obtained from the U. S. Army Corps of Engineers, Publications Depot, 2803 52nd Ave., Hyattsville, MD 20781. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246–S, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

(3) For high hazard potential dams, the borrower must obtain an independent review of the design and critical features of construction. The reviewer must have demonstrated experience in the design and construction of dams of a similar size and nature. The reviewer must be a qualified engineer not involved in the original design of the dam or a Federal or State agency responsible for dam safety. The reviewer must be satisfactory to RUS.

(4) The independent review of design must include, but not necessarily be limited to, plans, specifications, design calculations, subsurface investigation reports, hydrology reports, and redesigns which result from encountering unanticipated or unusual conditions during construction.

(5) The independent review of construction shall include:

(i) *Foundation preparation and treatment.* When the foundation has been excavated and exposed, and before critical structures such as earth embankments or concrete structures are placed thereon, the borrower shall require the reviewer to conduct an independent examination of the foundation to ensure that suitable foundation material has been reached and that the measures proposed for treatment of the foundation are adequate. This examination must extend to the preparation and treatment of the foundation for the abutments.

(ii) *Fill placement.* During initial placement of compacted fill materials, the borrower shall require the reviewer to conduct an independent examination to ensure that the materials being used in the various zones are suitable and that the placement and compaction procedures being used by the contractor will result in a properly constructed embankment.

(6) If the reviewer disagrees with any aspect of the design or construction which could affect the safety of the dam, then the borrower must hold a meeting with the design engineer and the reviewer to resolve such disagreements.

(7) Emergency action plan. For high hazard potential dams, the borrower must develop an emergency action plan incorporating preplanned emergency measures to be taken prior to and following a potential dam failure. The plan should be coordinated with local government and other authorities involved with the public safety and be approved by the borrower's board of directors.

(b)(1) For more information and guidance, the following publications regarding dam safety are available from FEMA:

(i) "Emergency Action Planning Guidelines for Dams," FEMA 64.

(ii) "Federal Guidelines for Earthquake Analysis and Design of Dams," FEMA 65.

(iii) "Federal Guidelines for Selecting and Accommodating Inflow Design Floods for Dams," FEMA 94.

(iv) "Dam Safety: An Owner's Guidance Manual," FEMA 145, August, 1987.

(2) These publications may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794.

§§ 1724.56—1724.69 [Reserved]

Appendix A to Subpart E of Part 1724—Hazard Potential Classification for Civil Works Projects

The source for this appendix is U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110–2–1155, Appendix E. Appendix E is available from the address in § 1724.55(a)(2).

Category [1]	Low	Significant	High
Direct Loss of Life [2]	None expected (due to rural location with no permanent structures for human habitation).	Uncertain (rural location with few residences and only transient or industrial development).	Certain (one or more extensive residential, commercial or industrial development).
Lifeline Losses [3]	No disruption of services—repairs are cosmetic or rapidly repairable damage.	Disruption of essential facilities and access.	Disruption of critical facilities and access.
Property Losses [4]	Private agricultural lands, equipment and isolated buildings.	Major public and private facilities	Extensive public and private facilities.
Environmental Losses [5]	Minimal incremental damage	Major mitigation required	Extensive mitigation cost or impossible to mitigate.

NOTES:

[1] Categories are based upon project performance and do not apply to individual structures within a project.

[2] Loss of life potential based upon inundation mapping of area downstream of the project. Analysis of loss of life potential should take into account the extent of development and associated population at risk, time of flood wave travel and warning time.

[3] Indirect threats to life caused by the interruption of lifeline services due to project failure, or operation, i.e., direct loss of (or access to) critical medical facilities or loss of water or power supply, communications, power supply, etc.

[4] Direct economic impact of value of property damages to project facilities and down stream property and indirect economic impact due to loss of project services, i.e., impact on navigation industry of the loss of a dam and navigation pool, or impact upon a community of the loss of water or power supply.

[5] Environmental impact downstream caused by the incremental flood wave produced by the project failure, beyond which would normally be expected for the magnitude flood event under a without project conditions.

Subpart F—RUS Contract Forms

§ 1724.70 List of RUS contract forms for architectural and engineering services.

The following RUS contract forms for architectural and engineering services are available:

(a) RUS Form 179, Architects and Engineers Qualifications;

(b) RUS Form 211, Engineering Service Contract for the Design and Construction of a Generating Plant;

(c) RUS Form 215, Engineering Service Contract—System Planning;

(d) RUS Form 220, Architectural Services Contract;

(e) RUS Form 234, Final Statement of Engineering Fee;

(f) RUS Form 236, Engineering Service Contract—Electric System Design and Construction;

(g) RUS Form 241, Amendment of Engineering Service Contract;

(h) RUS Form 244, Engineering Service Contract—Special Services;

(i) RUS Form 258, Amendment of Engineering Service Contract—Additional Project;

(j) RUS Form 284, Final Statement of Cost for Architectural Service;

(k) RUS Form 297, Engineering Service Contract—Retainer for Consultation Service; and

(l) RUS Form 459, Engineering Service Contract—Power Study.

§ 1724.71 Use of printed forms.

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis Staff, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. These forms may be reproduced as needed.

(b) If a RUS contract form is required by this part, the borrower shall use the form in the format available from RUS (photocopying or other exact reproduction is acceptable.) The RUS contract forms are not to be retyped, changed, modified or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so to indicate that they are different from the standard form.

§§ 1724.72—1724.73 [Reserved]

§ 1724.74 Engineering service contract for the design and construction of a generating plant, RUS Form 211.

The contract form in this section shall be used when required by this part.

Engineering Service Contract for the Design and Construction of a Generating Plant

AGREEMENT, made _____, 19____, between _____ (hereinafter called the "Owner") and _____ of _____ hereinafter called the "Engineer").

WHEREAS, the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") of the United States of America (hereinafter called the "Government") has approved the making of a loan or loan guarantee of not in excess of $_____ by the Government to the Owner pursuant to the Rural Electrification Administration Act of 1936, as amended, approximately $_____ of which is intended to finance, in whole or in part, the construction and operation of an electrical generating plant which is estimated to cost $_____ and consists of _____ in the State of _____, having the Rural Utilities Service project designation of _____, (hereinafter called the "Project"), located at such place as the Owner with the approval of the Administrator shall designate;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligation of Engineer

In accordance with the normal standards and practices used in the profession, the Engineer shall diligently and competently render all engineering services which shall be necessary or advisable for the expeditious, economical and sound design and construction of the Project with due consideration to all ecological and environmental requirements. The enumeration of specific duties and obligations to be performed by the Engineer hereunder shall not be construed to limit the general undertakings of the Engineer.

Article II

Design of Project

Section 1. The Engineer shall prepare and within ———— days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, a "Project Design Manual" which shall consist of, but not necessarily be limited to, the following items:

(a) A detailed statement covering the procedures to be followed by the Engineer in the performance of this Agreement, including, without limitation, such matters as the routing and distribution of copies of correspondence and reports, the furnishing of lists of plans and specifications, procedures relating to the awarding of construction and equipment contracts, identification of persons to be called by telephone with respect to various subject matters, contract closeouts, and meetings.

(b) A design outline which includes all design criteria for the Project, including, without limitation, plant site, equipment, building requirements, environmental equipment and other environmental factors, civil, electrical and mechanical requirements. The outline shall comply with requirements of the RUS Environmental Policies and Procedures.

(c) Evaluation studies which support the economic basis for the design and selection of equipment, including, without limitation, turbine throttle and exhaust conditions, boiler feed pump, air quality equipment and condenser.

(d) Testing procedures which outline the responsibilities to be assumed by the Owner, Engineer, and contractor and include, without limitation, acceptance testing, concrete tests, laboratory testing, radiographic inspection, electrical checkout and testing. Section 2. In addition, the Engineer shall prepare and within ____ days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, preliminary plans (hereinafter called the "Preliminary Plans") which shall consist of:

(a) A single-line diagram of proposed main and auxiliary electrical connections, including all major equipment, switching and substations.

(b) A single-line flow diagram of proposed steam, water, gas, oil and air connections, including all major equipment.

(c) A schedule, in a form acceptable to the Owner and Administrator, showing by months the estimated time required for each major subdivision of the Project for design, fabrication and installation, and the estimated date the project will be available for commercial service. Such schedule shall specify, in percentages, the portion of the total design performance of the Engineer under this Agreement which each item of design represents.

(d) The Engineer's estimate of the total cost of the completed Project, by components, together with the forecast of the amounts of money needed by the Owner each month until completion of the Project.

Section 3. Promptly upon receipt of approval by the Owner and by the Administrator, if the approval of the Administrator is required, of the Project Design Manual and Preliminary Plans, the Engineer shall proceed with preparation of and shall submit, in duplicate, to the Owner and to the Administrator, if approval of the Administrator is required, complete and detailed plans and specifications, drawings,

maps and other engineering documents required for the construction of the Project (all of the foregoing being hereinafter sometimes collectively called the "Plans and Specifications"). In the preparation of the Plans and Specifications, the Engineer shall consult with the Owner to the end that the Project shall serve the purposes intended by the Owner. The Engineer shall diligently make such necessary changes in the Plans and Specifications as may be required by the Owner and the Administrator. The Plans and Specifications shall include the following:

(a) Detailed drawings showing the complete design and layout of the Project.

(b) The form of construction contract (hereinafter called the "Construction Contract") to be entered into between the Contractor and Owner for the construction of the Project, including forms of notice and instructions to bidders, material and construction specifications, contractor's proposal, bidder's qualifications, contractor's bond and construction drawings. If the Owner or the Administrator shall direct that the Project shall be constructed under more than one contract, the Engineer shall submit forms of all necessary Construction Contracts and shall also prepare and submit in connection with each such contract all that is hereinabove required of the Engineer in connection with the Construction Contract. All maps, drawings, plans, specifications; estimates and other documents required to be prepared or submitted by the Engineer under this section or other sections of the Agreement shall conform to all applicable environmental requirements related to the project, including those commitments contained in the RUS Final Environmental Statement, standard specifications and other forms prescribed by the Administrator, unless deviation therefrom shall be permitted by the Administrator in writing.

Section 4. The Engineer shall also proceed to procure and submit to the Owner and to the Administrator, if approval of the Administrator is required, forms of other contracts and documents for the equipment and materials proposed to be purchased by the Owner for use in connection with the construction of the Project or any services necessary or desirable in connection therewith.

Section 5. The Engineer, immediately upon receipt of notice from the Owner and from the Administrator, if approval of the Administrator is required, of their approval for bidding purposes of the form of Construction Contract or any contracts for materials, equipment and services, as the case may be, shall, unless otherwise instructed by the Owner with the prior approval of the Administrator, take all appropriate and necessary action to procure full, free and competitive bidding for the award of such contracts. In fulfilling this responsibility, the Engineer shall prepare and submit to the Owner for approval a recommended bidders' list. Upon approval of such list by the Owner, the Engineer, in collaboration with the Owner, shall fix a date for the opening of bids for such contracts. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of the Proposals for the construction of the Project or the supply of materials, equipment or services therefor.

Section 6. The Engineer shall attend all openings of bids for the construction of the Project, or any part thereof, or for the furnishing of materials, equipment and services therefor. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Engineer shall carefully check and prepare tabulations of all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids so that contracts may be prudently and properly awarded. The Engineer shall submit in writing to the Owner its first, second and third choice of bidders, materials and equipment to be used in each case, with its recommendation and reasons for the selection. When the Owner has indicated its choice of bidders, materials, and equipment, the Engineer shall forward a tabulation of the bids, copies of the recommendation, and the Owner's selection to the Administrator, if approval of the Administrator is required. If requested by the Administrator, the Engineer shall forward one complete copy of all original bids received. Upon approval by the Administrator, if approval of the Administrator is required, of the selection of a bidder, materials, and equipment, the Engineer shall prepare three counterparts of the contract to be executed by the Owner and the Contractor and shall forward such executed counterparts to the Administrator for approval, if approval of the Administrator is required.

Section 7. The Engineer shall furnish to the Owner all engineering information, services, data and drawings required for procuring all necessary or desirable permits, licenses, franchises, titles, rights and authorizations and shall cooperate with the Owner's attorney in the procuring thereof.

Article III

Construction Management

Section 1. The Engineer shall supervise the construction of the Project and shall make a diligent effort to insure the expeditious and economical construction thereof in accordance with the Plans and Specifications and the terms of the Construction Contract and equipment or material contracts and the loan contract (hereinafter called the "Loan Contract") entered into between the Owner and the Government or any other lenders specifying the terms upon which the Project shall be constructed and financed. The Engineer shall carefully inspect all materials and equipment prior to their incorporation in the Project and shall promptly reject those not in compliance with the Specifications. The Engineer shall also supervise and inspect the incorporation of the materials in the Project and the workmanship with which such materials are incorporated. The Engineer, as representative of the Owner, shall have sole responsibility for requiring the Contractor to perform the Construction Contract in accordance with its terms and the Plans and Specifications, and, in performing the duties incident to such responsibility, the Engineer shall issue to the Contractor such directives and impose such restrictions as may be required to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications in the construction of the Project; provided that the Engineer shall not be required to exercise any actual control over employees of the Contractor. The term "supervise" when used herein shall not confer upon the Engineer responsibility for the Contractor's construction means, methods, or techniques. The obligations of the Engineer hereunder run to and are for the benefit of only the Owner and the Administrator.

Section 2. If, after the Construction Contract has been approved by the Administrator, if approval of the Administrator is required, it shall be determined that any change or changes in the Plans and Specifications are advisable, the Engineer shall prepare and submit to the Owner and the Contractor all necessary details in connection with such change or changes. The execution of such changes by the Engineer shall be within the intent of the Engineer's general undertakings as outlined elsewhere in this contract. Upon approval of the change or changes by the Owner and the Contractor, the proposed change or changes shall be submitted by the Engineer to the Administrator, if approval of the Administrator is required, in the form of a contract amendment.

Section 3. The Engineer shall prepare all estimates, certificates, reports and other documents required to be executed by the Engineer pursuant to the terms of the Construction Contract, equipment or material contracts or the Loan Contract. When any bid specification is forwarded to RUS for review, an updated cost estimate for the proposed contract shall also be included. After all major equipment contracts have been awarded and all permits have been received, and after approximately forty percent (40%) of the project design has been completed and construction has commenced, the Engineer shall update, on a quarterly basis, unless more frequently requested by the Owner, the information required under Article II, Section 2(d) hereof.

Section 4. The Engineer shall, upon completion of construction of component parts of the Project, make a complete inspection and conduct, utilizing the Owner's operating personnel and/or the manufacturer's representatives, such component and system tests as shall be necessary to assure conformance with the Plans and Specifications, the standards required by the Construction Contract, equipment and materials contracts and the guarantees given in connection therewith.

Section 5. The Engineer shall schedule and coordinate the start-up activities for placing the plant in service. This shall include preparation of system operating schedules, written system start-up procedures, and operating manuals describing the various plant systems and operating procedures.

Section 6. The Engineer shall prepare written procedures for final acceptance tests of major equipment, such procedures being subject to the Owner's concurrence. Furthermore, the Engineer shall conduct, utilizing the Owner's operating personnel, final acceptance tests of major equipment. Such tests shall be made in the presence of duly qualified representatives of the Owner and the Administrator, if the Administrator elects to attend, and the time and procedure of such tests shall be agreed upon by the Engineer, the Owner and the Administrator. After completion of each final acceptance test, the Engineer shall prepare copies of the test results and recommendations as to acceptability of equipment and submit them to the Owner for review.

Section 7. A competent resident engineer with full authority to act for the Engineer shall be maintained by the Engineer at the site of the Project during the entire period of any construction activity. The Engineer shall maintain at the site of the Project and under the direct supervision of the resident engineer a sufficient number of qualified engineering field inspectors to fully discharge the responsibilities of the Engineer pursuant to Article III, Section 1 hereof.

Article IV

Final Documents

The Engineer shall, upon the completion of the inspection and tests in respect of the Project provided in Sections 4 and 6 of Article III, obtain or prepare and deliver to the Owner the following:

(a) A nameplate inventory and summary in triplicate of all equipment and facilities incorporated in the Project together with a breakdown of contract costs arranged by Standard List of Retirement Units, RUS Bulletin 181–2.

(b) Two complete sets of final inventory (record) drawings showing the location and layout of the Project in accordance with revisions to design drawings and field records of construction. All information required by this Agreement to be included in the maps and drawings shall be included in the record drawings. One complete set of the record drawings shall be in reproducible form satisfactory to the Owner. The Engineer shall also provide the Owner with any other original manufacturer's equipment drawings not otherwise available to the Owner.

(c) An itemized statement in triplicate of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials, equipment and services thereof.

(d) A certificate in triplicate to the effect that the Project has been fully constructed substantially in accordance with the Plans and Specifications if and as amended.

(e) A detailed report in duplicate of all tests, in a form satisfactory to the Owner.

(f) All maps, tracings and drawings prepared or used by the Engineer in connection with the performance of the duties of the Engineer under this Agreement.

(g) Operating and maintenance manuals received from manufacturers.

When the Owner has determined that the Project is available for commercial service, the Engineer shall report to the Owner and the Administrator, for depreciation purposes, the estimated total contract cost of the Project, plus the Owner's other related overhead cost, as obtained from the Owner, showing as a separate item the cost of land (a non-depreciable item).

Article V

Compensation

Section 1. The Owner shall pay the Engineer for the services performed hereunder as indicated in the attached Schedule A.

Section 2. The total compensation to be paid in connection with this Agreement shall not exceed $_____ (_____ Dollars.)

Section 3. The Engineer shall submit to the Owner each month a certified statement in duplicate, of the amounts due for services hereunder, which statement shall be in accordance with the applicable reports of engineering progress required by Article VI, Section 1 hereof, and shall be in such detail and contain such supporting data as the Owner may request. The Owner shall review and approve each statement within thirty (30) days or inform the Engineer of the reasons the statement cannot be approved. Upon approval of each such statement by the Owner, ninety (90) percent of the amount thereof shall be due and payable. The balance of the compensation payable under Section 1 hereof shall be due and payable within thirty (30) days after completion of the Project. The Project shall be deemed complete for the purposes of the Agreement when all required final documents, including a certificate of completion, have been submitted by the Engineer and approved by the Owner and by the Administrator, if approval of the Administrator is required.

Section 4. In the event that this Agreement at any time be terminated pursuant to Article VI, Section 2 hereof, the compensation which shall be payable by the Owner to the Engineer for services rendered prior to such termination shall be computed as follows:

(a) Compensation for services in respect of the Design of the Project shall be determined in accordance with Section 1 of this Article V, using the final report of engineering progress referred to in Article VI, Section 1 hereof to determine the percentage of completion of the services in respect of design of the Project as of the effective date of termination.

(b) Compensation for services in respect of supervision and inspection of construction of the Project and all other services shall be computed at the rate of $ _____ per staff hour of supervision and inspection of construction performed by the Engineer prior to the effective date of termination, but in no event shall such compensation exceed an amount computed in accordance with the provisions of Section 1 (b) of the Article V. The Engineer shall submit to the Owner, in duplicate, a statement of the staff hours of supervision and inspection of construction in such detail and with such supporting data as may be requested by the Owner.

Section 5. Compensation payable to the Engineer under any of the Articles of this Agreement shall be in addition to taxes, or levies (excluding Federal, State and Local Income Taxes), which may be assessed against the Engineer by any State or political subdivision directly on services performed or payments for services performed by the Engineer pursuant to this Agreement. Such taxes or levies which the Engineer may be required to collect or pay, shall, in turn, be added by the Engineer to invoices submitted to the Owner pursuant to this Agreement.

Section 6. At or prior to the time when any payments shall be made to the Engineer pursuant to this Agreement, the Engineer if requested by the Owner shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project have been fully paid by the Engineer up to and including a date not more than fifteen (15) days prior to the date when such payment shall be made. At or before the time when the final payment provided to be made hereunder shall be made to the Engineer by the Owner, the Engineer shall also furnish to the Owner, as a condition precedent to such payment, a certificate in form satisfactory to the Administrator that all the employees of the Engineer have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien on the Project have been paid.

Section 7. Interest at the rate of _____ percent (_____%) per annum [percentage is not to exceed any applicable State usury laws] shall be paid by the Owner to the Engineer on all unpaid balances due the Engineer, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Engineer and the Owner.

Article VI

Miscellaneous

Section 1. The Engineer shall prepare and execute in such form and detail as the Owner and the Administrator shall direct all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the Construction Contract or the Loan Contract, including, without limitation, a monthly report of engineering progress on the form of schedule referred to in Article II, Section 2(c) hereof showing the percentage of completion of each of the subdivisions thereof and the overall percentage of completion of engineering services in respect of the design and construction of the Project as of the date of each such report; Monthly Cost Estimates and Forecasts of Cash Requirements in the form referred to in Article II, Section 2(d) hereof, which shall contain explanations of changes, if any, from prior Monthly Cost Estimates and Forecasts of Cash Requirements. From time to time the Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, all necessary changes in the

schedule referred to in Article II, Section 2(c) hereof, provided, however, that no changes shall be made in the percentages assigned to each item of design in the original schedule approved by the Owner and by the Administrator, if approval of the Administrator is required, pursuant to Article II, Section 2(c) hereof.

Section 2. The Owner may at any time terminate this Agreement by giving notice to the Engineer in writing to that effect, delivered or mailed to the Engineer's last known address not less than twelve (12) calendar days prior to the effective date of termination specified in the notice. From and after the effective date specified in such notice, this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services hereunder as provided in Section 3 of Article V hereof, and the Engineer shall be obligated forthwith to deliver to the Owner all maps, tracings and drawings of the Project and all other letters, documents and other material including all records pertaining thereto. If this Agreement shall be terminated, the Engineer shall prepare and submit to the Owner and the Administrator a final report of engineering progress as of the date of termination.

Section 3. Insurance. The Engineer shall take out and maintain throughout the period of this Agreement insurance if the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Engineer's employees who perform any of the obligations of the Engineer under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article V, Section 2, but not less than $1 million.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Engineer shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance. The Architect shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 4. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct in writing, shall replace any resident engineer or other persons employed by the Engineer in connection with the Project. For the information of the Owner and the Administrator, the Engineer shall file with the Owner and the Administrator a statement, signed by the Engineer, of the qualifications, including specific experience of each engineer and inspector assigned to the Project and the duties assigned to each.

Section 5. Approvals, directions and notices provided to be given hereunder by the Administrator to the Engineer or the Owner shall be deemed to be properly given if given by the Administrator or by any person authorized by the Administrator to give such approvals, directions or notices.

Section 6. The Engineer shall follow all applicable RUS rules and regulations.

Section 7. This Agreement may be simultaneously executed and delivered in three or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all constitute but one and the same instrument.

Section 8. The obligations of the Engineer under this Agreement shall be assigned without the approval in writing of the Owner and of the Administrator.

Section 9. This Agreement shall be effective only from and after the time when it shall be approved by the Administrator in writing. Neither this Agreement nor any provision thereof shall be modified, amended, rescinded, waived, or terminated without the approval of the Administrator.

Section 10. The Engineer shall comply with all applicable statutes pertaining to engineering and warrants that _____ (Name of Engineer) who will be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the _____ day of _____, 19____.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

_____ Owner

By _____ President

ATTEST: _____ Secretary

_____ Engineer

_____ President, Partner [Strike out inapplicable designation.]

ATTEST: _____ Secretary

Schedule A—Compensation

[End of clause]

§ 1724.75 Architectural service contract, RUS Form 220.

The contract form in this section shall be used when required by this part.

Architectural Services Contract

AGREEMENT, made _____, 19____, between _____ (hereinafter called the "Owner") and _____ of _____ (hereinafter called the "Architect").

WHEREAS, the Owner owns and operates a rural electric or telecommunications system, having the Rural Utilities Service designation of _____ financed in whole or in part with funds obtained by the Owner through loans made or guaranteed by the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"). If the project is financed wholly or in part by the Rural Telephone Bank, an agency of the United States of America, the references in this Agreement to the "Administrator" shall mean the "Governor" of the Rural Telephone Bank as well; and WHEREAS, the Owner desires to _____ (hereinafter called the "Project") at an estimated cost of construction not to exceed: _____ dollars ($ _____) for new work, and/or _____ dollars ($ _____) for remodeling, which aggregate _____ dollars ($ _____), hereinafter called the "Anticipated Cost," is exclusive of the cost of land, legal, architectural, accounting, or other professional services, or of interest.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligation of Architect

The Architect shall render, diligently and competently in accordance with the normal standards used in the profession, all architectural services which shall be necessary or advisable for the expeditious, economical and sound design, construction and satisfactory completion of the Project. The enumeration of specific duties and obligations to be performed by the Architect hereunder shall not be construed to limit the general undertakings of the Architect. The obligations of the Architect hereunder run to, and are for the benefit of, only the Owner and the Administrator and shall not relieve the Contractor of its own responsibility under its agreement with the Owner.

Article II

Preconstruction Period

Section 1.

(a) The Architect shall prepare: (1) preliminary drawings, (2) a general description of materials and types of construction, and (3) an overall estimate of the cost of construction (all of the foregoing

hereinafter collectively called the "Preliminary Documents"), and not later than _____ days after the date of execution of this Agreement, shall submit them in triplicate to the Owner for approval. Any changes in the Preliminary Documents required as a condition of approval shall be promptly made by the Architect.

(b) After receipt of notice of approval of the Preliminary Documents from the Owner, the Architect will proceed with the preparation of:

(1) Detailed plans showing the complete design of the Project including, but not limited to, architectural, structural, electrical, mechanical, and site development features.

(2) Complete and detailed specifications describing the design requirements of the Project, including all matters referred to in subparagraph (1) above, and any materials to be incorporated therein.

(3) The Construction Contract, RUS Form 257, "Contract to Construct Buildings," (hereinafter called the "Construction Contract"), which includes the Notice and Instructions to Bidders, Bid Bond, Bidders' Proposal, Owners' Acceptance, and Contractors' Bond, to be entered into between a bidder and the Owner for the construction of the Project. (All of the foregoing, including any revisions thereof, being hereinafter collectively called the "Plans and Specifications.")

Within _____ days after receipt of such approval of the Preliminary Documents, the Architect shall prepare and submit to the Owner, in duplicate, for its approval, complete and detailed "Final" Plans and Specifications as required for the construction of the Project. All documents required to be prepared and submitted by the Architect hereunder shall be on the applicable standard forms prescribed by the Administrator. In the preparation of the Plans and Specifications, the Architect shall consult with the Owner to ascertain the requirements of the project. Upon approval by the Owner of the Plans and Specifications, such approval being noted thereon under the corporate seal of the Owner attesting the approval thereof by the Owner, the Architect shall diligently make such changes in the Plans and Specifications as may be required as a condition of approval thereof.

Section 2. So far as it shall be necessary in the preparation of the Plans and Specifications and in the construction of the Project, the Owner shall furnish the Architect information and data in respect of the following:

(a) A complete and accurate survey of the building site, including grades and lines of streets, pavements and adjoining properties;

(b) The rights, restrictions, easements, boundaries and contours of the building site;

(c) Sewer, water, gas, electric, and telephone service, etc.;

(d) Test borings and pits, and chemical, mechanical and other tests.

Section 3. If the Owner shall direct that the Project shall be constructed under more than one contract, the Architect shall submit all necessary Construction Contract forms and shall also prepare and submit in connection with each such contract all of the information and documents that shall be required for construction of the Project.

Section 4. Immediately after the Architect has received approval of the Plans and Specifications from the Owner, the Architect, unless otherwise instructed by the Owner, shall take all appropriate and necessary action to procure full, free and competitive bidding for the award of the Construction Contract. Any public notices which by law are required of the Owner shall be published at the expense of the Owner.

Section 5. The Architect shall prepare and furnish to each qualified bidder requesting them, one set of the Plans and Specifications together with all necessary forms and other documents upon payment of the amount stipulated by the Architect, which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. The Architect shall also prepare and furnish to bidders requesting them, additional sets of the Plans and Specifications together with all necessary forms and other documents upon payment of an amount stipulated by the Architect, which payment will not be subject to refund.

Section 6. The Architect shall address to each prospective bidder a written response to inquiries from any prospective bidder with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of proposals for the construction of the Project or the furnishing of materials or services therefor. Under some circumstances the Architect may request that the inquiries from the prospective bidders be submitted in writing. The Architect or a competent representative of the Architect shall attend all openings of bids for the construction of the Project or any part thereof. The Architect shall carefully check and prepare tabulations of all bids received and shall render to the Owner a recommendation and all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently awarded in accordance with the policy and procedure prescribed by the Owner and the Administrator.

Section 7. The Architect shall furnish to the Owner all architectural information, data and drawings required for procuring all necessary or desirable permits, licenses, franchises, and authorizations, and shall cooperate with the Owner's attorney in the procuring thereof.

Section 8. If, after the Construction Contract has been approved, it shall be determined by the Owner that a change or changes in the Plans and Specifications are advisable, the Architect shall prepare and submit to the Owner all necessary details in connection with such change or changes, the Construction Contract shall be amended accordingly, and the Architect shall immediately proceed in respect of any construction required thereby in like manner as though such construction were originally required under the Construction Contract.

Article III

Construction Period

Section 1. The Architect shall conduct inspection activities, and for projects involving multiple construction contracts, shall provide project coordination and inspection activities, and shall make a diligent effort to secure for the Owner the expeditious and economical construction of the Project in accordance with the approved Plans and Specifications and the terms of the Construction Contract. The Architect, unless otherwise directed in writing by the Owner, shall have and exercise sole responsibility for the issuance of supplemental directives to the Contractor regarding the Contractor's performance in accordance with the terms of the Construction Contract. In fulfilling the above responsibility, the Architect shall:

(a) Issue to the Contractor such directives and impose such restrictions as may be necessary to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications.

(b) Visit the Project site at intervals appropriate to the stage of construction, but in no event (except for periods of prolonged work stoppage or construction delay) less than once per week, to inspect construction of the Project, to inspect excavations prior to placing of concrete and other work prior to it being covered from view.

(c) Make recommendations to the Owner concerning the selection of materials, colors, finishes, designs or devices for use in the Project.

(d) Periodically inspect materials prior to their incorporation into the Project.

(e) Observe the manner of incorporation of materials into the Project and the workmanship with which such materials are incorporated.

(f) Review and if acceptable approve material and/or equipment substitutions for compliance with contract documents.

(g) Observe results of specified tests.

(h) Be available to the Owner and the Contractor during office hours for consultation.

(i) Review completed construction, direct the Contractor to correct observed defects, and approve payments to the Contractor for correctly completed construction.

(j) Prepare such change orders as may be required for the Project.

Section 2. The Architect shall review and, if acceptable, approve shop drawings, samples, schedules and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with requirements of the Plans and Specifications.

Section 3. The Architect shall prepare and execute all estimates, certificates, and other documents required to be executed by the Architect pursuant to the Construction Contract. Unless otherwise provided in the Construction Contract, the Architect will furnish to the Contractor, free of charge, copies of the Plans and Specifications as may be reasonably necessary for the execution of the work.

Section 4. The Architect shall prepare and submit to the Owner monthly construction progress reports.

Section 5. The Architect shall, upon notice by the Contractor of completion of the work and a request for a final inspection of the Project:

(a) Make a careful and thorough inspection to determine that the construction of the

Project has been completed in accordance with the Plans and Specifications and the terms of the Construction Contract and any amendments thereto.

(b) Prepare and deliver to the Owner complete and detailed final documents including without limitation the following:

(1) An itemized statement of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials and services therefor.

(2) A Certificate of Completion on the form approved by the Administrator, to the effect that the Project has been fully constructed in accordance with the Plans and Specifications, if and as amended.

(3) One complete set of "as-constructed" Plans and Specifications of the Project in reproducible form satisfactory to the Owner.

(4) A Certificate of Architect and a Final Statement of Architect's Fee due hereunder.

(c) Use diligent efforts:

(1) To obtain from the Contractor releases of all liens and of rights to claim any lien from manufacturers, material suppliers, and subcontractors that have furnished materials or services for the construction of the Project.

(2) To obtain a Certificate of Contractor, on the form approved by the Administrator, to the effect that all labor has been paid.

(3) To obtain and deliver to the Owner all material and workmanship warranties or bonds required by the Plans and Specifications and service and operating manuals furnished by manufacturers or suppliers.

Article IV

Compensation

Section 1. The Owner shall pay the Architect for all services performed hereunder, except as provided in Section 3 hereof, a sum calculated as follows. (The Owner and Architect should agree upon the compensation schedule to be inserted in Tables Nos. 1 and 2 below. A sample compensation schedule is included in the Appendix for use as a guide in preparing the actual schedule to be used.)

TABLE NO. 1
NEW CONSTRUCTION
COST OF NEW CONSTRUCTION _____
COMPENSATION FOR ARCHITECTURAL SERVICES _____
TABLE NO. 2
REMODELING WORK
COST OF NEW CONSTRUCTION _____
COMPENSATION FOR ARCHITECTURAL SERVICES _____

If a Project shall consist of new construction and remodeling work, the Architect and the Owner shall agree on an equitable distribution of the final cost of construction between new construction and remodeling work, which shall be used to determine the applicable compensation from the two tables in this Section 1. For the purpose of computing compensation due the Architect under this Agreement for services rendered, "remodeling," shall be defined for this project as follows: _____. (A suggested definition of "remodeling" which may be used by the Owner in preparing the actual definition to be inserted here is included in the Appendix.)

The sum shall be due and payable as follows:

(a) Twenty percent (20%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Preliminary Documents.

(b) An additional fifty percent (50%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Plans and Specifications.

(c) An additional twenty percent (20%) thereof, as construction progresses, in monthly installments each bearing the same ratio to the total amount payable under this subsection (c) as the corresponding monthly payment to the Contractor bears to the total amount payable to the Contractor.

(d) The balance, if any, of the compensation due under this Section 1 and all other provisions of this Agreement, shall be payable within thirty (30) days after Completion of the Project in accordance with the provisions of Section 2 of this Article IV.

For the purpose of this Article, the term "Cost of Construction of the Project," shall mean the Construction Contract Price including amendments thereto, plus the cost of labor and materials furnished for the Project by the Owner and in respect of which the Architect shall have rendered services hereunder. Extra drafting or other services performed shall be paid for as provided in Section 3 of this Article IV.

The term "Completion of the Project" shall mean full performance of all obligations under this Agreement and all amendments and revisions thereof.

Section 2. Prior to the time when any payment shall be made to the Architect pursuant to this Agreement, the Architect, if requested by the Owner, shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Architect in connection with the Project have been fully paid by the Architect up to and including a date not more than fifteen (15) days prior to the date when such payment shall be due. Before the time when the final payment provided to be made pursuant to this Article IV shall be made to the Architect by the Owner, the Architect shall also furnish to the Owner as a condition precedent to such payment (a) a Certificate of Architect stating that all the employees of the Architect have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid, and (b) a Final Statement of Architect's Fee showing the Cost of Construction of the Project and the amount due the Architect under this Agreement.

Section 3. If the Architect shall, at the request of the Owner, perform any of the services outlined in Section 2 of Article II or if, after approval of the Construction Contract the Architect shall perform extra drafting or other services because of changes ordered by the Owner or default of the Contractor, the Architect shall be paid, in respect thereof, a sum equal to the Architect's reasonable out-of-pocket expenses, plus ____ percent (____%) (not to exceed fifty percent (50%)) thereof for office overhead plus reasonable subsistence, transportation and communication expenses, if any, paid to, or an behalf of, employees; which amount shall be due and payable ten (10) days after approval by the Owner of the services performed and the invoice of the Architect. The compensation due the Architect under this paragraph shall be decreased by the amount of any increase in the compensation due the Architect under Section 1 of this Article IV. The Architect shall submit to the Owner a statement of out-of-pocket expenses in respect of extra drafting or other services to be compensated for pursuant to this Section 3. Out-of-pocket expenses shall be limited to money paid by the Architect for direct labor, labor taxes, labor insurance, prorated sick leave, vacation, holiday, retirement, and medical insurance benefits, all applicable to such direct labor, except that, in the case of services performed with the prior approval of the Owner by the following officers, partners or others having ownership interests in the Architect, the rates corresponding to "direct labor" set forth below shall apply: _____.

Section 4. If this Agreement shall be terminated pursuant to the provisions of Section 1 or Section 2 of Article V hereof, the compensation for services rendered prior to such termination shall be computed as follows:

(a) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Preliminary Documents and such compensation shall be prorated on the basis of the percentage of completion of such Preliminary Documents as of the effective date of termination.

(b) One-half of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Plans and Specifications and such compensation shall be prorated on the basis of the percentage of completion of such Plans and Specifications as of the effective date of termination.

(c) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost shall represent compensation for the coordinate on and inspection of construction of the Project and such compensation shall be prorated on the basis of the percentage of such services determined by the value of the Project constructed prior to the effective date of termination.

(d) One-tenth of the compensation set forth in Section 1 of this Article IV based upon the Cost of Construction of the Project shall represent compensation for the services provided for in Section 4 of Article III and such compensation shall be prorated on the basis of the percentage of such services performed prior to the effective date of termination.

(e) Compensation for the services referred to in Section 2 of Article II, which may be

performed by the Architect at the request of the Owner and for extra drafting and other services because of changes ordered by the Owner, shall be computed in accordance with the provisions of Section 3 of this Article IV.

Section 5. interest shall be paid by the Owner to the Architect on all unpaid balances due the architect, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Architect. Such interest shall be at the rate of ____ percent (____%). [Percentage is not to exceed any applicable State usury laws] Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Architect and the Owner.

ARTICLE V

Miscellaneous

Section 1. The Owner may at any time terminate this Agreement by giving notice to the Architect in writing to that effect, delivered and mailed to the Architect's last known address not less than ten (10) days prior to the effective date of termination specified in the notice. From and after the effective date of termination specified in such notice, this Agreement shall be terminated, provided, however, that the Architect shall be entitled to receive compensation for services theretofore rendered pursuant to this Agreement, computed in accordance with the provisions of Article IV, Section 4, hereof.

Section 2. The Architect shall have the right, by giving to the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Architect shall have been prevented by conditions beyond the control and without the fault of the Architect: (a) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement, or (b) from proceeding with the completion of full performance of any remaining services, required of the Architect pursuant to this Agreement, for a period of six (6) months from the date of last performance by the Architect of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Architect shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in Section 1 of this Article.

Section 3. Upon Completion of the Project or termination of this Agreement, the Architect shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all letters, documents, and other material including all records pertaining thereto.

Section 4. Insurance. The Architect shall take out and maintain throughout the period of this Agreement insurance if the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Architect's employees who perform any of the obligations of the Architect under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article IV, Section 1, but not less than $1 million.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Architect shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Architect shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 5. The obligations and duties to be performed by the Architect under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Architect, if the Owner shall so direct, shall replace any person employed by the Architect in connection with the Project.

For the information of the Owner and the Administrator, the Architect shall, upon request, file with the Owner and the Administrator upon forms approved by the Administrator, statements of the qualifications, including specific experience, of each person assigned to the Project and the duties assigned to each, and certifications of insurance coverage.

Section 6. The Architect shall follow all applicable RUS rules and regulations.

Section 7. This Agreement shall be simultaneously executed and delivered in three counterparts, each of which when so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 8. The obligations of the Architect under this Agreement shall not be assigned without the approval in writing of the Owner.

Section 9. The Architect shall comply with all applicable statutes pertaining to the practice of the profession.

It is hereby warranted that the Architect possesses license number _____ issued by the State of _____ on the _____ day of _____, 19___.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be affixed and attested by their duly authorized representatives all as of the date first above written.

_____ Owner
BY: _____ President
ATTEST: _____ Secretary
_____ Architect
By _____
_____ Title
ATTEST: _____ Secretary

Appendix

Section 1. This sample compensation schedule may be used by the Owner in the preparation of the actual compensation schedule which will be inserted into Article IV, Section 1.

Table No. 1 new construction cost of new construction	Compensation for architectural services
Up $ 25,000	12%.
$25,000 to $100,000	$3,000+8.00% of all over $25,000.
$100,000 to $200,000	$9,000+7.75% of all over $100,000.
$200,000 to $300,000	$16,750+7.5% of all over $200,000.
$300,000 to $400,000	$24,250+7.25% of all over $300,000.
$400,000 to $500,000	$31,500+7.0% of all over $400,000.
$500,000 to $750,000	$38,000+6.3% of all over $500,000.
Over $750,000	$54,250 + 6.0% of all over $750,000.

NOTE: The above schedule should be adequate for office buildings with tenant improvements. For service garages, warehouses, telephone equipment buildings, etc., the Owner should negotiate lower compensation schedules.

Table No. 2 remodeling work cost of new construction	Compensation for architectural services
Up $ 50,000	14%.
$50,000 to $100,000	$7,000+12.00% of all over $50,000.
$100,000 to $200,000	$13,000+10.00% of all over $100,000.
$200,000 to $300,000	$12,000 + 8.0% of all over $200,000.

Table No. 2 remodeling work cost of new construction	Compensation for architectural services
Over $300,000	$31,000+6.0% of all over $300,000.

Section 2. A suggested definition of "remodeling" which the Owner may insert in Article IV, Section 1 is as follows: any modification to the interior or exterior of any existing structure that does not increase the amount of usable floor space of that structure.

[End of clause]

§ 1724.76 Engineering service contract—electric system design and construction, RUS Form 236.

The contract form in this section shall be used when required by this part.

Engineering Service Contract Electric System Design and Construction

AGREEMENT made _____, 19 ____, between _____ (hereinafter called the "Owner"), and _____ of _____ (hereinafter called the "Engineer").

WHEREAS, the Owner has obtained from the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") of the United States of America a loan or loans to finance in whole or in part a rural electric system pursuant to the Rural Electrification Act of 1936, as amended, and plans the construction of a project designated _____, being hereinafter called the "Project," consisting of approximately the following facilities:

Distribution and Transmission Lines:

_____ miles (_____ km) of _____ kV line,

_____ miles (_____ km) of _____ kV line,

_____

Substations:

Name _____ _____ MVA _____ kV to _____ kV

_____ _____ MVA _____ kV to _____ kV

Switching Stations:

Name _____ _____ kV

Name _____ _____ kV

Other:

_____ miles (_____ km) of line conversion,

_____ miles (_____ km) of line removal,

and the following: _____

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Article I

General Obligations

In accordance with the normal standards and practices used in the profession, the Engineer shall render diligently and competently all engineering services which shall be necessary or advisable for the expeditious, economical, and sound design and construction of the Project with due consideration given to all ecological and environmental requirements. The enumeration of specific duties and obligations to be performed by the Engineer hereunder shall not be construed to limit the general undertakings of the Engineer.

Article II

Preconstruction Period

Section 1. The Engineer shall give thorough consideration to aesthetics and the protection of the environment in all phases of construction of the Project including line routing and station locations. Where RUS or the Owner has prepared an environmental document or the Owner must comply with the conditions of a Special Use Permit imposed by a Federal land management agency, the Engineer shall incorporate all environmental commitments of the applicable documents that specifically relate to the facilities to be constructed.

Section 2. The Engineer shall, within thirty (30) days after the date of execution of this Agreement, make a complete field inspection and investigation for the purpose of determining the most economical and practicable location of the proposed lines. The Engineer shall cooperate with the Owner's right-of-way agent and attorney in developing a schedule of right-of-way procurement and assist the Owner in developing suitable property maps for use by the Owner's easement solicitors.

Section 3. Prior to the preparation of Plans and Specifications by the Engineer, the Owner shall furnish to the Engineer the following as may be applicable:

(a) Copies of pertinent Engineering Studies, including Construction Work Plans when available, on which to base the design of the electrical facilities to be built; key maps of the Owner's present and proposed facilities and detail or vicinity maps showing location of existing lines, consumers served and easements obtained.

(b) Detailed lists of materials, if any, on hand or on order which are to be furnished by the Owner in the construction of the Project, together with the quantity and the value of each item of such material.

(c) With respect to materials contained in the assembly units indicated for removal, a list showing values of individual material items for which the Contractor will be credited with respect to salvaged materials returned to the Owner if not included in item (b) above.

Section 4. Sufficient soil test data to ensure adequate foundation designs shall be provided by the_____Owner_____the Engineer [check one].

Section 5. If requested by the Owner, the Engineer shall prepare and submit to the Owner estimates of quantities of materials to be furnished by the Owner for use in connection with the construction of the Project. The Engineer shall procure and submit to the Owner forms of contracts and other documents for such materials and for such other services as may be necessary or desirable in connection with the construction of the Project.

Section 6. For transmission lines, the Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, a summary of transmission line and substation design data with supporting calculations. The Plans and Specifications and the Plan and Profile, if any, shall be based on the design data approved by the Owner and by the Administrator, if approval of the Administrator is required.

Section 7. The Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, plan and profile sheets for all transmission lines.

Section 8. In specifying right-of-way clearing for transmission lines where "feathering" and/or undulating boundaries are required, the Engineer shall mark all brush and trees to be removed unless such marking is the responsibility of another authority. The Engineer shall also compute all clearing units, and show all clearing units on the plan and profile drawings or on separate drawings prepared for this purpose.

Section 9. The Engineer shall prepare, and within_____days after the date of execution of this Agreement submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, two copies of complete and detailed plans and specifications, drawings, maps and other documents required for the construction of the Project (all of the foregoing being hereinafter collectively called the "Plans and Specifications"). In the preparation of the Plans and Specifications, the Engineer shall consult with the Owner to the end that the Project shall serve the purpose intended by the Owner. Unless otherwise directed by the Owner, the Engineer shall use Construction Work Plans and Engineering Studies, as furnished by the Owner, as a basis for the preparation of the Plans and Specifications. The Engineer shall diligently make such changes in the Plans and Specifications as may be required by the Owner or the Administrator as a condition of approval thereof.

Section 10. The Engineer shall, for each substation, prepare and furnish for the Owner's approval and for the Administrator's approval, if approval of the Administrator is required, the following drawings and such others as may be necessary or desirable for the construction of the Project:

One line diagram (relays, breakers, transformers, switches, etc.)
Three line diagram (PT, CT, phasing, etc.)
Plot plan (excluding land surveys and plots necessary in acquisition of property)
Grading plan, fence layout and details
Structure plan and details
Structure elevations (with section views)
Footing plan and details
Grounding plan and details
Cable trench and layout plan
Lighting plan and details
Control house plan and details
Control house elevations and details
Material lists
_____
_____

Section 11. All maps, drawings, plan and profile sheets, plans and specifications, contract forms, addenda, estimates, studies and other documents required to be prepared or submitted by the Engineer under this Article II or other articles of this Agreement shall conform to the applicable standard specifications and other forms prescribed by the Administrator, unless deviation

therefrom shall have been approved by the Administrator.

Section 12. The Engineer shall furnish to the Owner all engineering information, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises and authorizations from public bodies, and all necessary or desirable permits, licenses or agreements with respect to the crossing of navigable streams, railroads, and power lines, and with respect to the paralleling or crossing of communications lines and signal circuits and shall assist the Owner to the extent necessary to obtain such permits, licenses, franchises, authorizations, and agreements. The Engineer shall also furnish to the Owner all engineering information, data, and drawings required for procuring transmission line right-of-way through condemnation proceedings. If requested by the Owner, the Engineer shall attend, or appear as a witness in, hearings or other proceedings before public service commissions or other regulatory bodies in connection with procuring of the foregoing.

Section 13. When notified by the Administrator (if approval of the Administrator is required) and by the Owner of their approval of the form of Construction Contract, the Engineer shall immediately take all appropriate and necessary action to procure full, free and competitive bidding for the award of such contract or contracts, and when requested assist the Owner with the purchase of material and equipment. The term "Construction Contract" as used herein shall also include right-of-way clearing contracts, equipment contracts, or materials contracts if such contracts are utilized in the construction of the project. In fulfilling this responsibility, the Engineer shall prepare and submit to the Owner for approval a recommended list of qualified bidders to construct the project. Upon approval of such list by the Owner, the Engineer, in collaboration with the Owner, shall fix a date for the opening of bids for such contracts. The Engineer shall prepare and furnish to the qualified bidders the Plans, Specifications and Construction Drawings together with all necessary forms and other documents.

Section 14. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of the proposals for the construction of the Project or the supply of materials or services therefor. The Engineer, or a competent representative of the Engineer, shall attend and supervise all openings of bids for the construction of the Project or for the furnishing of materials or services therefor. The Engineer shall carefully check and prepare detailed assembly unit price tabulations of all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently and properly awarded in accordance with the policy and procedure prescribed by the Owner and the Administrator.

Section 15. If any change is to be made in the Plans and Specifications after the Construction Contract has been approved by the Owner and by the Administrator, if approval of the Administrator is required, the Engineer shall prepare and submit the necessary details for a contract amendment in accordance with the procedure prescribed by the Owner and the Administrator.

Article III

Staking

Section 1. The Engineer, with the approval of the Owner, shall determine when staking of the Project shall begin; provided, however, that the Engineer shall not commence staking until the Owner shall have certified that all right-of-way authorizations and easements reasonably required for the construction of the Project has been procured. The Owner shall furnish qualified persons to negotiate with landowners or tenants with respect to such right-of-way authorizations and easements and the locations of meter poles or service entrances. The Engineer shall proceed diligently with such staking and continue therewith in such manner as not to retard the progress of construction of the Project.

The staking shall be done in a thorough and workmanlike manner and in accordance with the latest revision of the National Electrical Safety Code, applicable state codes, plans and specifications and approved transmission line plan and profile sheets. The Engineer shall in no case stake lines other than those authorized by the Owner. The Engineer shall replace all stakes lost or removed prior to or during construction of the Project. All costs, including costs of stakes, equipment, and other material used in connection with the staking, shall be borne by the Engineer. All stakes shall be marked to show the pole number. Where practicable, all stakes shall be driven in such manner that the pole number shall be visible from the pole hauling truck when poles are being distributed. Each transmission structure stake shall be marked with the station number and the height and class of pole. Where it is probable that the Contractor will have difficulty in locating stakes, the Engineer shall drive a four-foot (1.2 m) building lath or equivalent in addition and adjacent to the stake. The Engineer shall give due consideration to the location of the consumer's load center and service termination in staking pole locations on or near the consumer's premises so that the service entrance cable or low voltage conductors to buildings will be as short as possible.

Section 2. The Engineer shall cause staking sheets or structure lists to be maintained in such form as the Owner shall require, on which shall be accurately entered all pertinent and useful information and directions concerning the construction of the Project. Five counterparts of the staking sheets or structure lists shall be supplied by the engineer to the Contractor and two copies shall be supplied to the Owner. When revisions in staking sheets or structure lists are necessary, the Engineer shall cause all copies of the staking sheets or structure lists to be corrected to reflect such revisions in the information or directions previously incorporated thereon.

Section 3. The Engineer shall prepare and submit to the Owner a report showing the quantity, kind, price, and extended total of all units of construction for each portion of the Project at the time such portion is released to the Contractor for construction.

Section 4. A competent resident engineer, with full authority to act for the Engineer, shall be maintained by the Engineer at the site of the Project at all times when staking is being performed.

Article IV

Construction Management

Section 1. The Engineer shall supervise the construction of the Project and shall make a diligent effort to ensure the expeditious and economical construction thereof in accordance with the Plans and Specifications and the terms of the Construction Contract or contracts and ensure that all specified environmental criteria are followed. The Engineer shall carefully inspect all materials and equipment prior to their incorporation in the Project and shall promptly reject those not in compliance with the Specifications. The Engineer shall also supervise and inspect the incorporation of the materials in the Project and the workmanship with which such materials are incorporated. Such inspection shall be deemed to be adequate if a reasonable percentage of all construction units are inspected at the time of installation. The Engineer, as representative of the Owner, shall have sole responsibility for requiring the Contractor to perform the Construction Contract in accordance with its terms and the Plans and Specifications; and, in performing the duties incident to such responsibility, the Engineer shall issue to the Contractor such directives and impose such restrictions as may be required to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract, Plans and Specifications, in construction of the Project; provided that the Engineer shall not be required to exercise any actual control over employees of the Contractor. The term "supervise" when used herein shall not confer upon the Engineer responsibility for the Contractor's construction means, methods, or techniques. The obligations of the Engineer hereunder run to and are for the benefit of only the Administrator and the Owner.

Section 2. The Engineer shall measure ground resistance at all substation ground fields prior to bonding the ground field to the substation structure. In addition, upon recommendation by the Engineer and authorization by the Owner, the Engineer shall measure the ground resistance at the following locations:

(a) At all transmission structures with overhead ground wire prior to the installation of the overhead ground wire.

(b) At all transmission structures with pole grounds prior to the installation of power conductor. The Engineer shall prepare a report of the ground resistance measurements mentioned above and submit such report to the Owner together with recommendations for changes, if any, required to ensure satisfactory operation. To the extent such changes are approved, the Engineer shall make appropriate changes in the Plans and Specifications in accordance with the provisions of Section 12 of Article II.

Section 3. The Engineer shall maintain at the site of the Project during the entire period of construction a competent resident engineer with full authority to act for the Engineer, unless specifically directed otherwise by the Owner in writing. When necessary to assure adequate inspection, one or more competent inspectors shall also be maintained when construction units are being installed or corrective work is being performed, the number of inspectors being subject to approval by the Owner. The Engineer shall report, in writing, all defects in workmanship or materials to the Contractor and the Owner and shall instruct the Contractor to correct all such defects immediately, in accordance with the terms of the Construction Contract. A resident engineer shall be present during the final inspection of completed construction.

Section 4. The Engineer shall test along lines, immediately after they have been energized, for objectionable radio interference. All cases of radio interference due to faulty construction of, or defective equipment in the Project shall be reported to the Contractor for correction.

Article V

Final Documents

Section 1. The Engineer shall prepare and, within twenty (20) days after the completion of construction of the Project by the Contractor, submit complete and detailed final documents to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required.

Article VI

Compensation

Section 1. The Owner shall pay the Engineer for the services performed hereunder as indicated in the attached Schedule A.

Section 2. The total compensation to be paid in connection with this Agreement shall not exceed $_____ (_____ Dollars.)

Section 3. Compensation payable to the Engineer under this Agreement shall be in addition to taxes, or levies (excluding Federal, state and local income taxes), which may be assessed against the Engineer by any state or political subdivision directly on services performed or payments for services performed by the Engineer pursuant to this Agreement. Such taxes or levies, which the Engineer may be required to collect or pay, shall, in turn, be added by the Engineer to invoices submitted to the Owner pursuant to this Agreement.

Section 4. Interest at the rate of _____ percent (_____%) per annum [percentage is not to exceed any applicable State usury laws] shall be paid by the Owner to the Engineer on all unpaid balances due the Engineer commencing thirty (30) days after the due date; provided that the delay in payment beyond the due date is not caused by any condition within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of interest has been determined by the Engineer and the Owner.

Section 5. Prior to the time when any payment shall be made to the Engineer pursuant to this Agreement, the Engineer, if requested by the Owner, shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project, have been fully paid by the Engineer up to and including a date not more than fifteen (15) days prior to the date when such payment shall be made. Before the time when the final payment shall be made to the Engineer by the Owner, the Engineer shall also furnish to the Owner, as a condition precedent to such payment, a certificate that all the employees of the Engineer have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid.

Article VII

Miscellaneous

Section 1. The Owner may at any time terminate this Agreement by giving notice to the Engineer in writing to that effect not less than ten (10) days prior to the effective date of termination specified in the notice. Such notice shall be deemed given if delivered or mailed to the last known address of the Engineer. From and after the effective date specified in such notice, this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services hereunder as provided in Section 2 of this Article VII.

Section 2. In the event that this Agreement at any time be terminated pursuant to Section 1 of this Article VII, the compensation which shall be payable to the Engineer by the Owner shall be computed so far as possible in accordance with the provisions of Article VI. To the extent that the provisions of Section 1 of Article VI cannot be applied because construction is incomplete at the effective date of such termination, the Engineer shall be paid for engineering services in respect of incomplete construction a sum which shall bear the same ratio of the compensation which would have been payable under the provisions of Section 1 of Article VI, if such construction had been completed as the engineering services in respect of such incomplete construction bear to the engineering services which would have been rendered if construction had been completed. If requested by the Owner, the Engineer shall submit to the Owner in duplicate a verified statement of actual expenses in respect of such incomplete construction. All compensation payable under this Section 2 shall be due and payable thirty (30) days after the approval by the Owner of the amount due hereunder.

Section 3. The Engineer shall have the right, by giving the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Engineer shall have been prevented by conditions beyond the control and without the fault of the Engineer (i) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement and (ii) from proceeding with the completion of full performance of any remaining services, required of the Engineer pursuant to this Agreement, for a period of six (6) months from the date of last performance by the Engineer of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in Section 2 of this Article.

Section 4. Upon completion of the Project or termination of the Contract, the Engineer shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all letters, documents, and other material, including all records pertaining thereto.

The term "Completion of the Project" shall mean full performance of all obligations under this Contract and all amendments and revisions thereof as evidenced by the approval of the final documents by the Owner and by the Administrator, if approval of the Administrator is required.

Section 5. The Engineer shall follow all applicable RUS rules and regulations.

Section 6. The Engineer shall prepare and execute in such form and detail as the Owner and the Administrator shall direct all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the terms of the Construction Contract or the Loan Contract, including progress reports of engineering services and reports of the progress of construction.

Section 7. The Engineer shall approve each monthly estimate of the Contractor prior to payment by the Owner. Such approval shall include a certification by the Engineer that all construction for which payment is requested has been completed in accordance with the terms of the Construction Contract and that all defective construction, of which the Contractor shall have received fifteen (15) or more days' written notice, has been corrected. The Engineer shall also maintain at the site of the Project a cumulative inventory of all units of construction incorporated in the Project.

Section 8. The Engineer shall notify the Owner when the Project, or any section thereof, shall be ready to be energized. When requested by the Administrator, such notice shall also be given to the Administrator. The Engineer shall assist the Owner in causing the Project, or such section thereof, to be energized.

Section 9. Insurance. The Engineer shall take out and maintain throughout the period of this Agreement insurance if the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Engineer's employees who perform any of the obligations of the Engineer under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have

limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article VI, Section 2, but not less than $1 million.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Engineer shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Engineer shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 10. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct, shall replace any resident engineer or other persons employed by the Engineer in connection with the Project. The Engineer shall file with the Owner and the Administrator a statement, signed by the Engineer, of the qualifications, including specific experience of each engineer and inspector assigned to the Project and the duties assigned to each.

Section 11. Approvals, directions and notices provided to be given hereunder by the Administrator to the Engineer or the Owner shall be deemed to be properly given if given by any person authorized by the Administrator to give approvals, directions or notices.

Section 12. The Engineer shall establish and maintain an office at the site of the Project, with telephone service where available when staking or construction is in progress. Any notice, instructions or communications delivered to such office shall be deemed to have been delivered to the Engineer.

Section 13. This Agreement may simultaneously be executed and delivered in two or more counterparts each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 14. The obligations of the Engineer under this Agreement shall not be assigned without the approval in writing of the Owner.

Section 15. The Engineer shall comply with all applicable statutes pertaining to engineering and warrants that _____ [Name of Engineer] who will be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the _____ day of _____, 19 ___.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed.

_____ Owner
By _____ President
ATTEST: _____ Secretary
_____ Engineer
By _____ President, Partner [Strike out inapplicable designation]
ATTEST: _____ Secretary
Schedule A—Compensation

[End of clause]

§§ 1724.77–1724.99 [Reserved]

Dated: July 18, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–19861 Filed 8–1–97; 8:45 am]
BILLING CODE 3410–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 58, 60, 90, 100, 200, and 300 Series and Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes. The proposed action would require replacing certain AlliedSignal Aerospace outflow/safety valves in the pressurization system with new or serviceable valves. The proposed AD results from a report of cracking and consequent failure of the affected outflow safety valves in the pressurization system. Investigation has revealed problems during the manufacturing process of certain Allied Signal outflow/safety valves. The actions specified by the proposed AD are intended to prevent outflow/safety valve cracking and consequent failure, which could result in rapid decompression of the airplane.

DATES: Comments must be received on or before October 4, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–33–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 AlliedSignal Aerospace, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Michael D. Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4147; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–33–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of an outflow/safety valve in the pressurization system failing on a Learjet Model 31A airplane, which resulted in depressurization of the airplane. Investigation of this outflow/safety valve (manufactured by AlliedSignal) revealed that the poppets of the valve were cracked.

These outflow/safety valves have been manufactured since January 1, 1989. Additional testing has shown that some of these outflow/safety valves manufactured since January 1, 1989, are susceptible to cracking because of improper injection molding during the manufacturing process.

The condition is traced to one of two lots (batch-runs) of molded poppets installed in valves since 1989. Research of these lots has revealed brittleness of these parts, which is characteristic of improper processing during injection molding. Tensile stress then develops upon installation of the poppet, which leads to hairline cracks. Small cracks have no effect, but can develop into larger cracks that cause an increase in the valve operating pressure, which could result in cabin depressurization.

The outflow/safety valves installed in Raytheon 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes are similar to the valves installed on the Learjet Model 31A airplane involved in the above-referenced incident. The outflow/safety valves installed at the factory on the affected airplanes were manufactured after September 1, 1991, and before October 1, 1996.

Applicable Service Information

AlliedSignal Aerospace has issued the following:

—Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995;

—Service Bulletin 103648–21–4022, Revision 1, dated May 30, 1995; and

—Service Bulletin 103598–21–4024, Revision 1, dated May 30, 1995.

These service bulletins include information for determining whether the affected airplanes incorporate one of the affected outflow/safety valves. The service bulletins also reference the applicable outflow/safety valves as follows:

Valve model	Valve serial numbers	Airplane models installed in
103570–26	80–223, 80–225 through 80–227, 80–229, and 80–230	2000.
103598–2	16–808, 39–2434, 45–747, 87–1600, and 116–1238	60(A), C90, and E90.
103598–15	128–11.	58P.
103648–1	11–4913 through 11–4916, 12–3832, 20–3006, 22–4950, 12–3912, 30–3076, 39–2412, 41–4918, 41–4919, 61–3300, 101–4920, 101–4922 through 101–4924, 101–4926 through 101–4931, 101–4933, 101–4935, 101–4936, 101–4938, 101–4940, 101–4941, 121–3683, 121–4942, 129–2904, and 129–2920.	60, 90, A90, B90, C90, E90, 100, A100, and B100.
103648–3	21–1827, 71–1828, 71–1829, and 120–1823 through 101–1826	58P.
103648–4	10–4664 through 10–4667, 11–223, 11–3093, 11–3161, 11–4717 through 11–4721, 12–795, 12–3641, 12–4760, 15–4368, 21–3182, 21–3208, 21–4722 through 21–4728, 21–4730, 21–4732, 22–3688, 22–3706, 22–3733, 22–3736, 24–4232, 24–4241, 24–4252, 24–4255, 27–4498, 32–3756, 32–3777, 32–4761, 32–4762, 37–1087, 37–1113, 38–2417, 41–3227, 41–3237, 41–3261, 41–3274, 41–4733, 41–4734, 42–1475, 42–3830, 42–3838, 42–3840, 42–3850, 42–3851, 42–3877, 42–3882, 42–3883, 42–3890, 48–1557, 49–181, 50–2804, 51–4735, 51–4736, 59–2090, 60–2896, 61–3301, 61–4737, 61–4738, 62–3907, 62–3968, 62–3981, 62–2155, 70–2960, 71–4739, 71–4740, 72–3988, 72–3991, 72–3999, 103648–4 74–4288, 74–4289, 74–4293, 74–4296, 76–4441, 77–4556, 77–4567, 79–2189, 79–2218, 79–2223, 81–3415, 87–1197, 87–1585, 89–2288, 95–4404, 99–2358, 99–2365, 99–2369, 99–2385, 99–2403, 99–2430, 104–4336, 107–1297, 110–3033, 111–3462, 111–3482, 111–3515, 111–4755, 116–4468, 116–4470, 119–2507, 119–2520, 120–3043, 120–3048, 120–3057, 120–4687 through 120–4692, 121–3562, 126–4490, 128–1776, and 129–4639.	200.
103648–5	10–325, 12–760, 12–799, 20–236, 21–1734, 21–1741 through 21–1744, 21–1746, 40–365, 21–1762, 41–1763, 60–243, 61–605, 77–1590, 90–461, 100–1712 through 100–1718, 100–1720 through 100–1726, 100–1728 through 100–1731, 105–149, 105–285, 109–1613, 109–1620, 116–1488, 121–1764, 126–1502, and 126–1511.	C90–1, C90A, and F90.
103648–6	101–1830, 101–1831, and 110–1822	58P and 90.
103648–7	11–208, 14–1206, 17–2204, 21–2817, 21–2818, 21–2827, 21–2828, 22–2832, 23–1030, 23–1058, 24–1211, 24–1232, 25–1634, 30–2719, 31–346, 42–843, 51–397, 51–398, 51–409, 54–1253, 74–1320, 77–2349, 86–2136, 103–1129, 110–1171, 112–961, 112–1000, 113–1172, 113–1192, 114–1538, 118–2569, 119–2607, 119–2614, 101–2796 through 100–2806, and 100–2808 through 100–2815.	B200 and 300.
103648–13	12–410, 12–464, 12–465, and 70–386 through 70–400	300 and B300.

In addition, Beechcraft Service Bulletin 2484, evision 1, dated October, 1995, references the Allied Signal service bulletins.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent outflow/safety valve cracking and consequent failure, which could result in rapid decompression 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 Raytheon 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes of the same type design that have an AlliedSignal Aerospace outflow/safety valve (referenced above in the discussion of the service information) installed, the proposed AD would require replacing outflow/safety valves with new or serviceable valves. Accomplishment of the proposed replacement would be in accordance with the applicable maintenance or service manual.

Similar Actions Required on the Affected Airplanes

On August 12, 1996, the FAA issued AD 96–17–10, Amendment 39–9719 (61 FR 42996, August 20, 1996), which requires replacing the outflow/safety valves with serviceable valves on certain Raytheon Model 400, 400A, MU–300–10, and 2000 airplanes, and 200, B200, 300, and B300 series airplanes. The FAA inadvertently included the Raytheon 200, B200, 300, and B300 series and Model 2000 airplanes in the applicability of AD 96–17–10. These airplanes are certificated under part 23 of the Federal Aviation Regulations (14 CFR part 23), and the FAA has determined that these airplanes should be addressed in this proposed AD along with certain other Raytheon airplanes certificated under 14 CFR part 23. The Raytheon Models 400, 400A, and MU–300–10 airplanes are certificated under part 25 of the Federal Aviation Regulations (14 CFR part 25). The FAA is proposing a revision to AD 96–17–10 in another action to retain the requirements for the airplanes certificated under 14 CFR part 25.

Compliance Time of the Proposed AD

The FAA has determined that an interval of 4 months is an appropriate compliance time to address the identified unsafe condition in a timely manner. This compliance time was deemed appropriate after considering the safety implications, the average utilization rate of the affected fleet, and the availability of the replacement parts. In addition, this compliance time will coincide with the compliance time originally included in AD 96–17–10 of 18 months after the effective date (effective date: September 24, 1996 plus 18 months = March 24, 1998). Should the proposed rule become a final rule, this would occur around November 1997. Based on this information, the 4-month compliance time of the proposed AD will coincide with the compliance time included in AD 96–10–17. Both should become effective in March 1998.

Cost Impact

The FAA estimates that 2,386 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Allied Signal will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,717,920 or $720 per airplane. The FAA knows of no affected airplane owner/operator that has already 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), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. 97–CE–33–AD.

Applicability: 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes (all serial numbers), certificated in any category. The following charts present airplane models and serial numbers that are equipped with AlliedSignal Aerospace outflow safety valves as referenced in either AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; Service Bulletin 103648–21–4022, Revision 1, dated May 30, 1995; or Service Bulletin 103598–21–4024, Revision 1, dated May 30, 1995.

—The airplanes presented in the charts are affected by paragraph (a) of this AD.

—All airplanes are affected by paragraph (b) of this AD.

AIRPLANE MODELS AND SERIAL NUMBERS THAT ARE EQUIPPED WITH ALLIED SIGNAL OUTFLOW VALVES

Models	Serial N-3.
58P and 58PA	TJ–3 through TJ–497.
60 and A60	P–3 through P–246 with Kit No. 60–5024–1S incorporated.
B60	P–247 through P–307 with Kit No. 60–5024–3 S incorporated.
B60	P–308 through P–596.
65–90, A90, B90, C90, and C90A	LJ–1 through LJ–1302.
E90	LW–1 through LW–347.
F90	LA–2 through LA–236.
100 and A100	B–1 through B–94, B–100 through B–204, and B–206 through B–247.
B100	BE–1 through BE–137.
200 and B200	BB–2, and BB–6 through BB–1419.

AIRPLANE MODELS AND SERIAL NUMBERS THAT ARE EQUIPPED WITH ALLIED SIGNAL OUTFLOW VALVES—Continued

Models	Serial N-3.
200C and B200C	BL–1 through BL–23, BL–25 through BL–57, and BL–61 through BL–137.
200T	B–1 through BT–32.
200CT and B200CT	BN–1 through BN–4.
300	FA–1 through FA–220, and FF–1 through FF–19.
B300	F1–1 through F1–72.
B300C	FM–1, FM–2, and FM–3.
2000	NC–4 through NC–53.
H90 (T44A)	LL–1 through LL–61.
A100 (U–21F)	B–95 through B–99.
A100–1 (U21J)	BB–3, BB–4, and BB–5.
A200 (C12–A/C)	BD–1 through BD–30, and BC–1 through BC–75.
A200 (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (C–12F)	BP–52 through BP–63.
A200CT (RC–12G)	FC–1, FC–2, and FC–3.
A200CT (RC–12H)	GR–14 through GR–19.
A200CT (RC–12K)	FE–1 through FE–9.
B200C (C–12F)	BL–73 through BL–112, and BL–118 through BL–123.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 and BU–12.
B200C (UC–12M)	BV–1 through BV–10.
B200C (RC–12M)	BV–11 and BV–12.
B200C (C–12F)	BP–64 through BP–71.
B200CT (FWC–12D)	FG–1 and FG–2.

APPLICABLE OUTFLOW SAFETY VALVES WITH APPLICABLE AIRPLANE MODELS

Valve model	Valve serial numbers	Airplane models installed in
103570–26	80–223, 80–225 through 80–227, 80–229, and 80–230	2000.
103598–2	16–808, 39–2434, 45–747, 87–1600, and 116–1238	60(A), C90, and E90.
103598–15	128–11	58P.
103648–1	11–4913 through 11–4916, 12–3832, 20–3006, 22–4950, 12–3912, 30–3076, 39–2412, 41–4918, 41–4919, 61–3300, 101–4920, 101–4922 through 101–4924, 101–4926 through 101–4931, 101–4933, 101–4935, 101–4936, 101–4938, 101–4940, 101–4941, 121–3683, 121–4942, 129–2904, and 129–2920.	60, 90, A90, B90, C90, E90, 100, A100, and B100.
103648–3	21–1827, 71–1828, 71–1829, and 120–1823 through 101–1826	58P.
103648–4	10–4664 through 10–4667, 11–223, 11–3093, 11–3161, 11–4717 through 11–4721, 12–795, 12–3641, 12–4760, 15–4368, 21–3182, 21–3208, 21–4722 through 21–4728, 21–4730, 21–4732, 22–3688, 22–3706, 22–3733, 22–3736, 24–4232, 24–4241, 24–4252, 24–4255, 27–4498, 32–3756, 32–3777, 32–4761, 32–4762, 37–1087, 37–1113, 38–2417, 41–3227, 41–3237, 41–3261, 41–3274, 41–4733, 41–4734, 42–1475, 42–3830, 42–3838, 42–3840, 42–3850, 42–3851, 42–3877, 42–3882, 42–3883, 42–3890, 48–1557, 49–181, 50–2804, 51–4735, 51–4736, 59–2090, 60–2896, 61–3301, 61–4737, 61–4738, 62–3907, 62–3968, 62–3981, 62–2155, 70–2960, 71–4739, 71–4740, 72–3988, 72–3991, 72–3999, 74–4288, 74–4289, 74–4293, 74–4296, 76–4441, 77–4556, 77–4567, 79–2189, 79–2218, 79–2223, 81–3415, 87–1197, 87–1585, 89–2288, 95–4404, 99–2358, 99–2365, 99–2369, 99–2385, 99–2403, 99–2430, 104–4336, 107–1297, 110–3033, 111–3462, 111–3482, 111–3515, 111–4755, 116–4468, 116–4470, 119–2507, 119–2520, 120–3043, 120–3048, 120–3057, 120–4687 through 120–4692, 121–3562, 126–4490, 128–1776, and 129–4639.	200.
103648–5	10–325, 12–760, 12–799, 20–236, 21–1734, 21–1741 through 21–1744, 21–1746, 40–365, 21–1762, 41–1763, 60–243, 61–605, 77–1590, 90–461, 100–1712 through 100–1718, 100–1720 through 100–1726, 100–1728 through 100–1731, 105–149, 105–285, 109–1613, 109–1620, 116–1488, 121–1764, 126–1502, and 126–1511.	C90–1, C90A and F90.
103648–6	101–1830, 101–1831, and 110–1822	58P and 90.
103648–7	11–208, 14–1206, 17–2204, 21–2817, 21–2818, 21–2827, 21–2828, 22–2832, 23–1030, 23–1058, 24–1211, 24–1232, 25–1634, 30–2719, 31–346, 42–843, 51–397, 51–398, 51–409, 54–1253, 74–1320, 77–2349, 86–2136, 103–1129, 110–1171, 112–961, 112–1000, 113–1172, 113–1192, 114–1538, 118–2569, 119–2607, 119–2614, 101–2796 through 100–2806, and 100–2808 through 100–2815.	B200 and 300.
103648–13	12–410, 12–464, 12–465, and 70–386 through 70–400	300 and B300.

Note 1: The above outflow/safety valves are referenced in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; Service Bulletin 103648–21–4022, Revision 1, dated May 30, 1995; and Service Bulletin 103598–21–4024, Revision 1, dated May 30, 1995. In addition, Beechcraft Service Bulletin 2484, Revision 1, dated October, 1995, references the AlliedSignal service bulletins.

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 in the body of this AD, unless already accomplished.

To prevent outflow/safety valve cracking and consequent failure, which could result in rapid decompression of the airplane, accomplish the following:

(a) For the airplanes referenced in the "Airplane Models and Serial Numbers That Are Equipped with Allied Signal Outflow Valves" table that is included in the "Applicability" section of this AD: Within the next 4 months after the effective date of this AD, replace (with a new or serviceable valve) any outflow/safety valve that does not have one of the following:

(1) The valve identification plate MOD RECORD stamped "PCA" (Poppet Change Accomplished); or

(2) A valve with an inked ATD Quality Assurance "Functional Test (FT)" stamp that is dated June 1992, or later.

(b) For all airplanes: As of the effective date of this AD, no person may install on any affected airplane any outflow/safety valve that is referenced in the "Applicable Outflow Safety Valves With Applicable Airplane Models" table that is included in the "Applicability" section of this AD.

(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 (ACO), 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 ACO.

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to AlliedSignal Aerospace, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or may examine these documents 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 July 29, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–20442 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD040–4014b and MD047–4014b; FRL–5867–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Degreasing Operations and Vehicle Refinishing, and Definition of Motor Vehicle

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of establishing volatile organic compound (VOC) emission control requirements for degreasing operations and vehicle refinishing. EPA is also proposing to approve the SIP revision submitted by the State of Maryland that establishes a definition for the term "motor vehicle." In the final rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 3, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

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: See the information provided in the Direct Final action of the same title, pertaining to Maryland's degreasing and vehicle refinishing regulations, which is located in the rules and regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–20472 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0045b; FRL–5863–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definition of volatile organic compounds (VOC) and updates the Exempt Compound list in rules from the Bay Area Air Quality Management District (BAAQMD).

The intended effect of proposing approval of this action is to incorporate

changes to the definition of VOC and to update the Exempt Compound list in BAAQMD rules to be consistent with the revised federal and state VOC definitions. EPA is proposing approval of these revisions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views these administrative changes as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 3, 1997.

ADDRESSES: Written comments on this action should be addressed to: Christine Vineyard, Rulemaking Office [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone (415) 744–1197.

SUPPLEMENTARY INFORMATION:

This document concerns BAAQMD Rule 8–4, General Solvent and Surface Coating Operations; Rule 8–11, Metal Container, Closure and Coil Coating; Rule 8–12, Paper, Fabric, and Film Coating; Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8–14, Surface Coating of Large Appliance and Metal Furniture; Rule 8–19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8-20, Graphic Arts Printing and Coating; Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8–29, Aerospace Assembly and Component Coating Operations; 8–31, Surface Coating of Plastic Parts and Products; Rule 8–32, Wood Products; Rule 8–38, Flexible and Rigid Disc Manufacturing; Rule 8–43, Surface Coating of Marine Vessels; Rule 8–45, Motor Vehicle and Mobile Equipment Coating Operations; and 8–50, Polyester Resin Operations. These rules were submitted to EPA on October 18, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 10, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–20362 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VT–015–01–1217b; A–1–FRL–5860–1]

Clean Air Act Approval and Promulgation of State Implementation Plans; Vermont: PM10 Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of a State Implementation Plan (SIP) revision submitted by the State of Vermont, which replaces the total suspended particulate (TSP) prevention of significant (PSD) increments with increments for PM10 (particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers). This action is being taken under the Clean Air Act. In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive 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 proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before September 3, 1997.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, EPA-Region 1, JFK Federal Bldg (CAA), Boston, MA 02203. Copies of Vermont's submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the following locations: Office of Ecosystem Protection, EPA-Region 1, One Congress Street, 11th floor, Boston, MA 02203; Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676; and Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Lancey at (617) 565-3587 or lancey.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 18, 1997.

John P. DeVillars,

Regional Administrator, EPA-Region 1.

[FR Doc. 97–19623 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–5868–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Iowa, Kansas, Missouri, and Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Municipal Waste Combustors (MWC) 111(d)/129 Plan negative declarations submitted by the states of Iowa, Kansas,

Missouri, and Nebraska. These negative declarations certify that MWCs subject to the requirements of section 111(d) and section 129 of the Clean Air Act do not exist in these states. In the final rules section of the **Federal Register**, the EPA is approving the states' negative declarations as a direct final rule without prior proposal because the Agency views this action as noncontroversial, and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the 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. The EPA will not institute a second comment period on this document. 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 September 3, 1997.

ADDRESSES: Comments may be mailed to Aaron J. Worstell, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551–7787.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 11, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–20476 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970708168–7168–01; I.D. 061697B]

RIN 0648–AJ58

Magnuson-Stevens Act Provisions; National Standard Guidelines

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes revisions to the guidelines for national standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits); and adds guidelines for new national standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea). The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations prepared by the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed revisions and additions implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act (SFA). Additional minor changes are made to conform national standard guideline language to the Magnuson-Stevens Act, as amended.

DATES: Comments must be received by September 18, 1997.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, F/SF, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). This proposed rule amend 50 CFR part 600, subpart D, to update the national standard guidelines and to implement some of the Magnuson-Stevens Act amendments.

Background

Section 301(a) of the Magnuson-Stevens Act contains 10 national standards for fishery conservation and management, with which all FMPs and amendments prepared by the Councils and the Secretary must comply. Section 303(b) requires that the Secretary establish advisory guidelines, based on the national standards, to assist in the development of FMPs. The SFA established three new national standards, which require consideration of impacts of fishery management decisions on fishing communities (national standard 8), bycatch (national standard 9), and safety of life at sea (national standard 10). This proposed rule would add those standards and associated guidelines to subpart D of 50 CFR part 600. Other provisions of the SFA necessitate significant revisions to the guidelines for national standard 1 (optimum yield), as proposed in this rule. Minor revisions to national standards 2 (scientific information), 4 (allocations), and 5 (efficiency) are also proposed to conform those standards and their guidelines to the Magnuson-Stevens Act, as amended. Additional technical changes would be made to § 600.305 (general) and to guidelines for national standards 3 (management units)(§ 600.320) and 7 (costs and benefits)(§ 600.340) to update terminology.

The proposed guidelines explain requirements and provide some options for compliance with the guidelines. Lists and examples are not all inclusive; rather, they are intended to provide illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The proposed guidelines are intended to provide for reasonable accommodation of regional or individual fishery characteristics, provided that the requirements of the Magnuson-Stevens Act are met. The guidelines are intended as an aid to decisionmaking, with responsible conservation and management of valued national resources as the goal. The proposed revisions and additions are described below.

General

The new and revised national standards apply to all FMPs and implementing regulations, existing and future. However, as Congress recognized by allowing the Councils 2 years from enactment (i.e., until October 11, 1998) to submit FMP amendments to comply with the related new requirements in section 303(a), it will take considerable time and effort to bring all FMPs into compliance with the Magnuson-Stevens Act. For example, national standard 9 requires that management measures minimize bycatch, but section 303(a)(11), which states exactly the same requirement, need not be fully implemented in all FMPs until October 1998; NMFS will therefore not expect full compliance with standard 9 until that date. Once issued in final, NMFS will use these guidelines to review all new FMPs and amendments to determine whether they comply with the new and revised national standards. The Councils should review existing FMPs for compliance with the new and revised national standards and submit necessary amendments by October 11, 1998.

The main purpose of the guidelines is to aid the Councils in fulfilling the requirements of the Magnuson-Stevens Act. In the context of preparing an FMP or FMP amendment, the guidelines typically address only the Councils'

responsibilities, even though the Secretary has similar responsibilities in developing Secretarial FMPs or amendments to Secretarial FMPs (sections 304(c) and 304(g) of the Magnuson-Stevens Act). A new definition for "Council" would be added to § 600.305 to include the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act, for efficiency of language and consistency throughout the national standard guidelines.

The proposed guidelines seek as much precision as possible in the use of the words "should" and "must." "Must" is used to denote an obligation to act and is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor that reviewers will look for in evaluating an FMP. Definitions of "must" and "should" in § 600.305 would be revised to reflect current terminology. A definition for "stock or stock complex" would be added to § 600.305 to clarify use of that term and the term "fishery," as used throughout the national standard guidelines.

National Standard 1

National standard 1 guidelines were last revised in July 1989; that revision focused on establishing a conservation standard, with the requirement that specific, objective, and measurable definitions of overfishing be established for each fishery managed under the Magnuson-Stevens Act (then called the Magnuson Act). By 1993, more than 100 such definitions had been approved by NMFS. At that time, NMFS convened a panel of scientists from inside and outside the agency to review the approved definitions, investigate their strengths and shortcomings, and standardize, as much as possible, the criteria and basis for future evaluations of overfishing definitions. The goal of the review was to develop a scientific consensus as to the appropriateness of the definitions and the criteria used in their evaluation. The resulting analysis and report (Rosenberg *et al.*, 1994) provided a set of scientific principles for defining overfishing. However, these principles were not incorporated into the national standard guidelines. The SFA introduced or revised definitions for a number of terms and introduced several new requirements for contents of FMPs. As a consequence of the 1994 report and the statutory amendments, revisions to the national standard 1 guidelines are proposed in this rule, as described below.

Overview of Issues

Revisions to the guidelines for national standard 1 center on the Magnuson-Stevens Act's definitions of "overfishing," "overfished," and "optimum yield (OY);" the requirement for the establishment of objective and measurable criteria for determining the status of a stock or stock complex; and the requirement for remedial action in the event that overfishing is occurring or that a stock or stock complex is overfished.

The Magnuson-Stevens Act, in section 3(29), defines both "overfishing" and "overfished" as a rate or level of fishing mortality that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis. Neither term was defined statutorily, prior to passage of the SFA. The existing national standard guidelines define overfishing somewhat differently, by qualifying "capacity" with the phrase "long-term," and do not include a definition of "overfished." The Magnuson-Stevens Act, in section 3(28), defines OY as the amount of fish that: (1) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (2) is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factors; and (3) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. The main changes relative to the pre-SFA definition include the requirements that OY take into account protection of marine ecosystems, that OY be no greater than MSY, and that OY for an overfished fishery allow rebuilding to the MSY level.

The Magnuson-Stevens Act, in section 303(a)(10), requires each FMP to specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished (also referred to as "criteria for overfishing"), with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery. The Magnuson-Stevens Act also requires, in section 304(e), the Secretary to report annually to Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For each fishery managed under an FMP or international agreement, the status is to be determined using the criteria for overfishing specified in that FMP or agreement. A fishery is to be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that it will become overfished within 2 years.

If the Secretary determines at any time that a fishery is overfished or approaching an overfished condition or that existing remedial action taken for the purpose of ending any previously identified overfishing has not resulted in adequate progress, the Secretary must notify the Council and request that remedial action be taken. Section 304(e)(3) of the Magnuson-Stevens Act requires that the Council then, within 1 year of notification, prepare an FMP, FMP amendment, or proposed regulations for the purposes of ending (or preventing) overfishing and rebuilding (or sustaining) affected stocks of fish.

Overview of Approach

In developing the proposed revised guidelines, policy guidance was taken from the Magnuson-Stevens Act and other applicable law. Because the guidelines deal with technical subject matter, guidance was also taken from the scientific literature. In particular, the report by Rosenberg *et al.* (1994) was used to the extent that it is consistent with the Magnuson-Stevens Act and other applicable law.

Overview of Policy and Rationale

Sustainability

Sustainable fisheries is a key theme within the Magnuson-Stevens Act. The idea of sustainability is inherent in MSY, a quantity that is central to the Magnuson-Stevens Act's definitions of both overfishing and OY. Closely related to the idea of sustainability is the phrase "on a continuing basis," which is used both in the Magnuson-Stevens Act's definition of overfishing and in national standard 1. The appropriate interpretation of sustainability or the phrase "on a continuing basis" is the one generally accepted in the fishery science literature, which relates to an average stock level and/or average potential yield from a stock over a long period of time.

It is important to distinguish between the theoretical concept of MSY as an unconditional maximum independent of management practice, and actual estimates of MSY, which are necessarily

conditional on some type of (perhaps hypothetical) management practice. Specifically, the proposed guidelines, in § 600.310(c), describe the role of "control rules" in estimating MSY, where an MSY control rule is any harvest strategy that, if implemented, would be expected to result in a long-term average catch close to MSY. A Council could choose an MSY control rule in which fishing mortality is held constant over time at an appropriate rate, one in which escapement is held constant over time at an appropriate level, or some other control rule, so long as that control rule is consistent with the Magnuson-Stevens Act.

Although the Magnuson-Stevens Act's definition of overfishing is expressed in terms of a stock's capacity to produce MSY on a continuing basis, nothing in the Magnuson-Stevens Act implies that such production, in the form of harvest, must actually occur. That is, a stock does not actually need to produce MSY on a continuing basis in order to have the capacity to do so.

Use of the Terms "Overfishing" and "Overfished"

The relationship between the terms "overfishing" and "overfished" can be confusing. As used in the Magnuson-Stevens Act, the verb "to overfish" means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis. "Overfishing," then, occurs whenever a stock or stock complex is subjected to any such rate or level of fishing mortality. Interpreting the term "overfished" is more complicated. In the Magnuson-Stevens Act, this term is used in two senses: First, to describe any stock or stock complex that is subjected to overfishing; and second, to describe any stock or stock complex for which a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. (See, for example, section 303(a)(1)(A) and section 304(e)(1)) To avoid confusion, the proposed guidelines use "overfished" in the second sense only. Both terms would be defined in § 600.310(d).

Status Determination Criteria

The Magnuson-Stevens Act, in section 303(a)(10), requires that each FMP specify objective and measurable criteria (status determination criteria) for identifying when stocks or stock complexes covered by the FMP are overfished. To fulfill the intent of the Magnuson-Stevens Act, such status determination criteria are comprised of two components: A maximum fishing mortality threshold and a minimum stock size threshold (see § 600.310(d)(2)). The maximum fishing mortality threshold should be set at the fishing mortality rate or level defined by the chosen MSY control rule. The minimum stock size threshold should be set at one-half the MSY level, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold, whichever is greater. When data are insufficient to estimate any of these quantities, use of reasonable proxies would be required.

It is important to note that, even if no minimum stock size threshold were set, the maximum fishing mortality threshold would define a minimum limit on the rate of rebuilding for a stock that falls below its MSY level. The reason for requiring a minimum stock size threshold in addition to a maximum fishing mortality threshold is to define the point at which this minimum rebuilding rate is no longer prudent. For example, in the case of a slow-growing stock, a rebuilding rate that satisfies the statutory deadline of 10 years would be considered prudent management. However, for a fast-growing stock, it might be possible to fall to an extremely low level of abundance and still rebuild to the MSY level within 10 years, which would not be considered prudent management. Thus, the definition of the minimum stock size threshold includes a constraint, equal to one-half the MSY level, to ensure that the 10-year allowance is not abused in the case of fast-growing stocks.

Choosing an MSY control rule is thus key to satisfying national standard 1, because it defines the maximum fishing mortality threshold and plays a role in defining the minimum stock size threshold. Any MSY control rule defines a relationship between fishing mortality rate and stock size. This relationship is the maximum fishing mortality threshold, which may be a single number or a mathematical function. In addition, any MSY control rule defines a rate of rebuilding for stocks that are below the level that would produce MSY. The smallest stock size at which rebuilding to the level that would produce MSY is achieved within 10 years defines the minimum stock size threshold for that rule, unless such a stock size is less than one-half the MSY level. The MSY control rule also defines an upper bound on any OY control rule that might be specified.

The proposed status determination criteria in § 600.310(d)(2) would play a fundamental role in developing the Secretary's annual report to Congress and the Councils, as required by section 304(e) of the Magnuson-Stevens Act. Under the proposed guidelines, the Secretary's annual report would list all stocks or stock complexes for which the maximum fishing mortality rate has been exceeded or for which the minimum stock size has not been achieved. Thus, the Secretary's decision as to whether a stock or stock complex is listed in the annual report of overfished stocks would be based on either the current rate of fishing mortality or the current condition of the stock, regardless of whether that condition is associated with either previous or current overfishing.

Preventing Overfishing

The Magnuson-Stevens Act is clear in its requirement to prevent overfishing. Except under very limited conditions, discussed below, this requirement must be satisfied. The Magnuson-Stevens Act's requirement to take remedial action in the event that a stock becomes overfished is not a substitute for the requirement to prevent overfishing in the first place.

Previous versions of the national standard guidelines have described limited conditions under which some amount of overfishing is permissible. Some of these conditions are retained in § 600.310(d)(6) in the proposed revision, but they are tightened considerably. Although the Magnuson-Stevens Act requires that OY and overfishing criteria be specified for each fishery, it does not require a one-to-one relationship between the fisheries for which OYs are specified and the fisheries for which overfishing criteria are specified. For example, in a mixed-stock fishery, overfishing criteria may be specified for the individual stocks, even if OY is specified for the fishery as a whole (see § 600.310(c)(2)(iii)). Thus, it is conceivable that OY could be achieved for the fishery as a whole, even while overfishing of an individual stock is occurring.

Ending Overfishing and Rebuilding Overfished Stocks

In the event that overfishing occurs or is projected to occur within 2 years, or in the event that a stock or stock complex is overfished or is projected to become overfished within 2 years, the Magnuson-Stevens Act, in section 304(e), gives detailed requirements for Council action that must be undertaken in response. As described in § 600.310(e) of the proposed guidelines, if overfishing is occurring, Council action must be designed to reduce

fishing mortality to a rate or level no greater than the maximum fishing mortality threshold. If a stock or stock complex is overfished, fishing at a rate or level equal to the maximum fishing mortality threshold will not meet the required rate and level of rebuilding. In such cases, Council action must go beyond that required for situations involving only overfishing.

Although the Magnuson-Stevens Act implicitly sets the rebuilding target equal to the MSY stock size, this constitutes a minimum standard only. In general, management practices should be designed to achieve an average stock size equal to the stock size associated with OY (or the average OY, in cases where OY is determined annually), and rebuilding plans should be consistent with this goal. Because OY cannot exceed MSY on average, the stock size that would produce OY will generally be greater than the stock size that would produce MSY. Remedial action should do more than merely assure that the stock reaches the target level; rather, the goal should be to restore the stock's capacity to remain at that level on a continuing basis, consistent with the stock's natural variability. For example, a stock should not be considered rebuilt just because its current size matches the target level, which could result from a single good year class, if the stock's condition would not likely be sustained by succeeding year classes. In order to conclude that a stock has fully recovered, it may be necessary to rebuild the age structure, in addition to achieving a particular biomass target. This generally requires keeping fishing mortality at an appropriately low level for several years (approximately one generation of the species).

Remedial action should be designed to make consistent and reasonably rapid progress towards recovery. "Consistent progress" means that no grace period exists beyond the statutory timeframe of 1 year for taking remedial action, and that such action should include explicit milestones expressed in terms of measurable improvement of the stock with respect to its status determination criteria. The Magnuson-Stevens Act, in section 304(e)(4), requires that the time period for rebuilding be as short as possible, but always less than 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise.

Optimum Yield

One of the most significant changes made by the SFA is a requirement that OY not exceed MSY. Further, for overfished fisheries, OY must be based upon a rebuilding schedule that increases stock levels to those that would produce MSY. These changes are expressions of a precautionary approach, which should contain three features (see § 600.310(f)(5)). First, target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the maximum fishing mortality threshold. Second, a stock that is below its MSY level should be harvested at a lower rate or level of fishing mortality than if it were above its MSY level. Third, the criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding a stock's status or productive capacity corresponds to greater caution in setting target catch levels. Because specification of a precautionary approach can be a complicated exercise, NMFS plans to supplement these guidelines in the near future with technical guidance for use in implementing such an approach. This additional guidance may be provided in a form similar to that developed to implement the 1994 amendments to the MMPA.

The Magnuson-Stevens Act is clear in its requirement that specification of OY take into account protection of marine ecosystems. This is reflected in the new provisions concerning the identification and description of essential fish habitat (EFH). Proposed guidelines for designation of EFH were published in the **Federal Register** on April 23, 1997, at 62 FR 19723. Due to the complex nature of marine ecosystem structure and function, qualitative methods may be used to satisfy this requirement wherever data or scientific understanding are insufficient to permit use of quantitative methods.

NMFS recognizes the growing importance of non-consumptive uses of marine fishery resources. Such activities include ecotourism, fish watching, recreational diving, and marine education. These proposed guidelines are intended to accommodate such uses in specifying OY.

National Standard 2

National standard 2 requires that conservation and management measures be based on the best scientific information available. Guidelines for national standard 2, at § 600.315, would be revised to clarify that data to be considered include information on the marine ecosystem, and that information on the fishery should include information on fishing communities. These proposed revisions reflect increased emphasis placed on these areas by the SFA. In addition, § 600.315(e)(3) would be revised to require that each Stock Assessment and Fishery Evaluation (SAFE) report contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with additional information to determine the stock status relative to the overfishing criteria.

National Standard 4

Language from section 303(a)(14) of the Magnuson-Stevens Act would be added to § 600.325(c)(3)(ii) to specify that, to the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

National Standard 5

The SFA reworded this standard by replacing the word "promote" with "consider." The proposed revisions to § 600.330 would revise the national standard language and make other minor adjustments to bring the guidelines into conformance with that change, replace the term "Magnuson Act" with "Magnuson-Stevens Act," and correct references to that statute.

National Standard 7

National standard 7 requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Section 600.340(b) would be revised to clarify that, while the Magnuson-Stevens Act does not require that an FMP be prepared for every fishery, Councils must prepare FMPs for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

National Standard 8

National standard 8 requires that conservation and management measures take into consideration the importance of fishery resources to fishing communities, with a goal of providing for the sustained participation of those communities and minimizing adverse economic impacts to the extent practicable. In successive drafts of standard 8, Congress clarified that the

importance of fishery resources to fishing communities must be considered within the context of the conservation requirements of the Magnuson-Stevens Act by including in the final standard the phrase "consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks)." Therefore, the proposed guidelines emphasize that national standard 8 must not compromise the conservation goals of the Magnuson-Stevens Act.

For the purposes of national standard 8, fishing communities are considered geographic areas encompassing a specific locale where residents are dependent on fishery resources or are engaged in the harvesting or processing of those resources. The geographic area is not necessarily limited to the boundaries of a particular city or town. No minimum size for a community is specified, and the degree to which the community is "substantially engaged in" or "substantially dependent on" the fishery resources must be defined within the context of the geographical area of the FMP. Those residents in the area engaged in the fisheries include not only those actively working in the harvesting or processing sectors, but also "fishery-support services or industries," such as boat yards, ice suppliers, or tackle shops, and other fishery-dependent industries, such as ecotourism, marine education, and recreational diving.

The term "sustained participation" does not mandate maintenance of any particular level or distribution of participation in one or more fisheries or fishing activities. Changes are inevitable in fisheries, whether they relate to species targeted, gear utilized, or the mix of seasonal fisheries during the year. This standard implies the maintenance of continued access to fishery resources in general by the community. As a result, national standard 8 does not ensure that fishermen would be able to continue to use a particular gear type, to target a particular species, or to fish during a particular time of the year.

National Standard 9

National standard 9 requires that the Councils and NMFS consider the effects of conservation and management measures on bycatch. This standard applies to all existing and planned conservation and management measures, because most of these measures can affect amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable (but see discussion above under "General".

Specifically, national standard 9 requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Bycatch occurs when fishing methods are not perfectly selective or when fishermen catch more than they are able to or choose to retain. A fishing method is perfectly selective if it results in the catch and retention only of the desired size, sex, quality, and quantity of the target species, without causing other fishing-related mortality; few, if any, fishing methods meet these strict criteria. Bycatch results in fishing mortality because some portion of the bycatch does not survive, even if it is returned to the sea or escapes after an encounter with the fishing gear. Bycatch mortality affects the ability to achieve sustainable fisheries and the benefits they can provide to the Nation.

For purposes of national standard 9, the term "bycatch" means fish that are harvested in a fishery, but that are not sold or kept for personal use. Fish released alive under a recreational catch-and-release fishery management program are not considered bycatch if they are not regulatory discards (fish released because regulations require it). Fish released dead under a recreational catch-and-release program are considered bycatch. Atlantic highly migratory species harvested in a commercial fishery managed by the Secretary under section 304(g) of the Magnuson-Stevens Act or the Atlantic Tunas Convention Act (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary are not bycatch. Bycatch also does not include any fish that are legally retained in a fishery and kept for personal, tribal, or cultural use or that enter commerce through sale, barter, or trade. Fish donated to a nonprofit organization are bycatch if the retention of the donated fish otherwise would be prohibited.

"Fish," as defined in § 600.10, includes all forms of marine animal (including sea turtles) and plant life, other than marine mammals and birds. Thus, national standard 9 does not apply to the incidental catch of marine mammals or birds. Incidental catches of these species are governed under other statutes such as the MMPA, the ESA, or the Migratory Bird Treaty Act.

Bycatch includes fish taken by fishing gear but not captured by a fisherman (i.e., unobserved fishing-related mortality). For purposes of national standard 9, unobserved mortality is restricted to mortality resulting from direct interaction with fishing gear. Examples of unobserved bycatch mortality include mortality resulting from injuries to fish that escape through net mesh; mortality of crabs or other benthic organisms that are crushed by on-bottom gear; mortality of fish that are hooked, but not landed; or mortality of fish due to ghost fishing of abandoned or lost fishing gear. Mortality due to other than direct interactions of fish with fishing gear is not included as bycatch; however, the ecosystem or other effects of such mortality can be important.

"Discard" refers only to the discard of whole fish at sea or elsewhere. Bycatch and bycatch mortality can be reduced by changing how, when, where, and how many fish are caught, how many fish are discarded, and how fish are handled before being discarded. Bycatch can be decreased either by decreasing the catch of fish that would be discarded or by retaining fish that otherwise would be discarded. National standard 9 establishes a priority first to reduce bycatch, and then to increase the survival rate of fish that are discarded.

Reducing bycatch by simply retaining juvenile fish that would otherwise have been discarded will not eliminate the problem of foregoing the potential growth of those fish. This approach may be substantially less beneficial than avoiding the catch of the juvenile fish in the first place. Therefore, alternatives that include reduction in the catch of juvenile fish should be considered.

The proposed national standard 9 guidelines acknowledge that bycatch and discard survival data, information to assess impacts on the population and ecosystem, and data on social and economic effects of alternative management measures to reduce bycatch may be limited. Due to these limitations, precise estimates of bycatch, bycatch mortality, or associated effects of alternative conservation and management measures may not be possible.

Councils should support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve other information used to determine the extent to which it is practicable to reduce bycatch and bycatch mortality. Sources of this information could include at-sea observer programs, new technology to monitor catch weight and species composition, or better use of industry-reported catch and discard information. The importance of this activity is emphasized in section 303(a)(11) and (12) of the Magnuson-

Stevens Act, which requires that FMPs establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Timely summaries of the amount and type of bycatch for each fishery should be collated for each fishery; SAFE reports required under § 600.315(e) provide a vehicle for these summaries.

Because limited resources are available to the Councils and NMFS to address bycatch problems, and a variety of bycatch problems exists in most fisheries, each Council should identify and prioritize the bycatch problems in its fisheries, based on the benefits to the Nation expected to accrue from addressing these problems.

National Standard 10

This new standard states, "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea." It requires that FMPs, FMP amendments, and other regulations consider impacts of management measures on safety of life at sea and attempt to minimize any adverse impacts. The proposed guidelines interpret the phrases "to the extent practicable" and "safety of human life at sea," and include guidance on safety considerations, a consultation process, and possible mitigation measures to be used to avoid or lessen the impact of management measures on the safety of fishermen.

Classification

This rule has been determined to be significant for purposes of E.O. 12866, although a determination has not been made whether the actions associated with the guidelines will have an annual impact on the economy of $100 million or more.

The main thrust of the guidelines, in carrying out the 1996 revisions to the Magnuson-Stevens Act, is to reduce overfishing immediately, rebuild overfished stocks within a set timeframe, and reduce bycatch and bycatch mortality to the extent practicable. An economic analysis quantifying the expected benefits and costs is not available at this time. However, it is expected that as fish stocks are rebuilt, long-term benefits will significantly outweigh short-term costs of management regimes developed under these guidelines. The relative benefits and costs associated with the implementation of the guidelines will be determined as individual FMPs are revised to meet the new provisions of the Magnuson-Stevens Act.

Nevertheless, a rough estimate of the total potential benefits can be made, assuming that all stocks are rebuilt to their maximum sustainable levels. Over the long term, and summed for all fisheries within the exclusive economic zone, the potential increase in net revenues is estimated at $2.9 billion annually, along with an additional 300,000 jobs nationwide. As the flow of fish from rebuilt stocks to consumers increases, price fluctuations may begin to flatten, and employment will stabilize, thereby providing additional benefits to the Nation. The costs associated with programs developed under these guidelines will include short-term reductions in fishing effort and investment in new fishing gear. Each amendment to an existing FMP and all new FMPs will contain detailed analyses of the benefits and costs of the management programs under consideration, to ensure compliance with E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would add to and update the national standards and accompanying explanatory and interpretive language to implement statutory provisions of the SFA. The SFA's amendments to the national standards make it necessary for the Councils to examine their existing FMPs and all future proposed management measures to ensure that they comply with the national standards; FMPs found out of compliance will need to be amended. These proposed guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force of law. Should Councils propose regulations as a result of the SFA, those actions may affect small entities and could be subject to the requirement to prepare a Regulatory Flexibility Analysis at the time they are proposed. Any future effects on small entities that may ultimately result from amendments to FMPs to bring them into compliance with the Magnuson-Stevens Act would be speculative at this time. As a result, a Regulatory Flexibility Analysis for this proposed rule was not prepared.

Reference

Rosenberg, A., P. Mace, G. Thompson, G. Darcy, W. Clark, J. Collie, W. Gabriel, A. MacCall, R. Methot, J. Powers, V. Restrepo, T. Wainwright, L. Botsford, J. Hoenig, K. Stokes. 1994. Scientific review of definitions of overfishing in U.S. fishery management plans. NOAA Tech. Memo. NMFS-F/SPO–17, 205 p. Nat. Mar. Fish. Serv., Office of Science and Technology, 1315 East-West Hwy., Silver Spring, MD 20910.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: July 30, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. In § 600.305, paragraph (c)(13) is removed and the second and third sentences of paragraph (a)(2), the last sentence of paragraph (a)(3), and paragraphs (c)(1), (c)(3), (c)(11), and (c)(12) are revised to read as follows:

§ 600.305 General.

(a) * * *

(2) * * * The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) * * * FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

* * * * *

(c) * * *

(1) *Must* is used, instead of "shall," to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

* * * * *

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens

Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

* * * * *

(11) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(12) *Stock or stock complex* is used as a synonym for "fishery" in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics," as distinguished from the Magnuson-Stevens Act's second definition of fishery as "any fishing for such stocks."

4. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be reduced under paragraph (f)(3) of this section. The most important limitation on the specification of OY is that the choice of OY, and the conservation and management measures proposed to achieve it, must prevent overfishing.

(c) *MSY.* Each FMP should include an estimate of MSY.

(1) *Definitions.* (i) "MSY" is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

(ii) "MSY control rule" means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

(iii) "MSY stock size" means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant.

(2) *Options in specifying MSY.* (i) Because MSY is a theoretical concept, its estimation in practice is conditional on the choice of an MSY control rule. In choosing an MSY control rule, Councils should be guided by the characteristics of the fishery, the FMP's objectives, and the best scientific information available. The simplest MSY control rule is to remove a constant catch in each year that the estimated stock size exceeds an appropriate lower bound, where this catch is chosen so as to maximize the resulting long-term average yield. Other examples include the following: Remove a constant fraction of the biomass in each year, where this fraction is chosen so as to maximize the resulting long-term average yield; allow a constant level of escapement in each year, where this level is chosen so as to maximize the resulting long-term average yield; vary the fishing mortality rate as a continuous function of stock size, where the parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule, a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

(ii) Any MSY values used in determining OY will necessarily be estimates, and these will typically be associated with some level of uncertainty. Such estimates must be based on the best scientific information available (see § 600.315) and must incorporate appropriate consideration of risk (see § 600.335). Beyond these requirements, however, Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed. For example, a point estimate of MSY may be expressed by itself or together with a confidence interval around that estimate.

(iii) In the case of a mixed-stock fishery, MSY should be specified on a stock-by-stock basis. However, where MSY cannot be specified for each stock, then MSY may be specified on the basis of one or more species as an indicator for the mixed stock as a whole or for the fishery as a whole.

(iv) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available, and should be re-estimated as required by changes in environmental or ecological conditions or new scientific information.

(3) *Alternatives to specifying MSY.* When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY, to the extent possible. Examples include various reference points defined in terms of relative spawning per recruit. For instance, the fishing mortality rate that reduces the long-term average level of spawning per recruit to 30–40 percent of the long-term average that would be expected in the absence of fishing may be a reasonable proxy for the MSY fishing mortality rate. The long-term average stock size obtained by fishing year after year at this rate under average recruitment may be a reasonable proxy for the MSY stock size, and the long-term average catch so obtained may be a reasonable proxy for MSY. The natural mortality rate may also be a reasonable proxy for the MSY fishing mortality rate. If a reliable estimate of pristine stock size (i.e., the long-term average stock size that would be expected in the absence of fishing) is available, a stock size somewhere in the range of 25–75 percent of this value may be a reasonable proxy for the MSY stock size, and the product of this stock size and the natural mortality rate may be a reasonable proxy for MSY.

(d) *Overfishing*—(1) *Definitions.* (i) "To overfish" means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(ii) "Overfishing" occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(iii) In the Magnuson-Stevens Act, the term "overfished" is used in two senses: First, to describe any stock or stock complex that is subjected to a rate or level of fishing mortality meeting the criterion in paragraph (d)(1)(i) of this section, and second, to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. To avoid confusion, this section uses "overfished" in the second sense only.

(2) *Specification of status determination criteria.* Each FMP must specify, to the extent possible, objective and measurable status determination criteria for each stock or stock complex covered by that FMP and provide an analysis of how the status determination criteria were chosen and how they relate to reproductive potential. Status determination criteria must be expressed in a way that enables the Council and the Secretary to monitor the stock or stock complex and determine annually whether overfishing is occurring and whether the stock or stock complex is overfished. In all cases, status determination criteria must specify both of the following:

(i) *A maximum fishing mortality threshold or reasonable proxy thereof.*

The fishing mortality threshold may be expressed either as a single number or as a function of spawning biomass or other measure of productive capacity. The fishing mortality threshold must not exceed the fishing mortality rate or level associated with the relevant MSY control rule. Exceeding the fishing mortality threshold for a period of 1 year or more constitutes overfishing.

(ii) *A minimum stock size threshold or reasonable proxy thereof.* The stock size threshold should be expressed in terms of spawning biomass or other measure of productive capacity. To the extent possible, the stock size threshold should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold specified under paragraph (d)(2)(i) of this section. Should the actual size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(3) *Relationship of status determination criteria to other national standards*—(i) *National standard 2.* Status determination criteria must be based on the best scientific information available (see § 600.315). When data are insufficient to estimate MSY, Councils should base status determination criteria on reasonable proxies thereof to the extent possible (also see paragraph (c)(3) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data.

(ii) *National standard 3.* The requirement to manage interrelated stocks of fish as a unit or in close coordination notwithstanding (see § 600.320), status determination criteria should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (c)(2)(iii) of this section).

(iii) *National standard 6.* Councils must build into the status determination criteria appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors (see § 600.335).

(4) *Relationship of status determination criteria to environmental change.* Some short-term environmental changes can alter the current size of a stock or stock complex without affecting the long-term productive capacity of the stock or stock complex. Other environmental changes affect both the current size of the stock or stock complex and the long-term productive capacity of the stock or stock complex.

(i) If environmental changes cause a stock or stock complex to fall below the minimum stock size threshold without affecting the long-term productive capacity of the stock or stock complex, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable timeframe (also see paragraph (e)(4)(ii) of this section). Status determination criteria need not be respecified.

(ii) If environmental changes affect the long-term productive capacity of the stock or stock complex, one or more components of the status determination criteria must be respecified. Once status determination criteria have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(iii) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible.

(5) *Secretarial approval of status determination criteria.* Secretarial approval or disapproval of proposed status determination criteria will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Contains the elements described in paragraph (d)(2) of this section.

(iii) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria.

(iv) Is operationally feasible.

(6) *Exceptions.* There are certain limited exceptions to the requirement to prevent overfishing. Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied:

(i) It is demonstrated by analysis (paragraph (f)(6) of this section) that such action will result in long-term net benefits to the Nation.

(ii) It is demonstrated by analysis that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur.

(iii) The resulting rate or level of fishing mortality will not cause any species or ecologically significant unit thereof to require protection under the ESA, or any stock or stock complex to fall below its minimum stock size threshold.

(e) *Ending overfishing and rebuilding overfished stocks.* (1) *Definition.* A threshold, either maximum fishing mortality or minimum stock size, is being "approached" whenever it is projected that the threshold will be breached within 2 years, based on trends in fishing effort, fishery resource size, and other appropriate factors.

(2) *Notification.* The Secretary will immediately notify a Council and request that remedial action be taken whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) The rate or level of fishing mortality for a stock or stock complex is approaching the maximum fishing mortality threshold;

(iv) A stock or stock complex is approaching its minimum stock size threshold; or

(v) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(3) *Council action.* Within 1 year of such time as the Secretary may identify that overfishing is occurring, that a stock or stock complex is overfished, or that a threshold is being approached, or such time as a Council may be notified of the same under paragraph (e)(2) of this section, the Council must take remedial action by preparing an FMP, FMP amendment, or proposed regulations. This remedial action must be designed to accomplish all of the following purposes that apply:

(i) If overfishing is occurring, the purpose of the action is to end overfishing.

(ii) If the stock or stock complex is overfished, the purpose of the action is to rebuild the stock or stock complex to the MSY level within an appropriate timeframe.

(iii) If the rate or level of fishing mortality is approaching the maximum fishing mortality threshold (from below), the purpose of the action is to prevent this threshold from being reached.

(iv) If the stock or stock complex is approaching the minimum stock size threshold (from above), the purpose of the action is to prevent this threshold from being reached.

(4) *Constraints on Council action.* (i) In cases where overfishing is occurring,

Council action must be sufficient to end overfishing.

(ii) In cases where a stock or stock complex is overfished, Council action must specify a time period for rebuilding the stock or stock complex that is as short as possible, taking into account the status and biology of the stock or stock complex, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock or stock complex within the marine ecosystem. However, in no case may the timeframe for rebuilding exceed 10 years, except where the biology of the stock or stock complex, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise.

(iii) For fisheries managed under an international agreement, Council action must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) *Interim measures.* The Secretary, on his/her own initiative or in response to a Council request, may implement interim measures to reduce overfishing under section 305(c) of the Magnuson-Stevens Act, until such measures can be replaced by an FMP, FMP amendment, or regulations taking remedial action.

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(ii) If interim measures are made effective without prior notice and opportunity for comment, they should be reserved for exceptional situations, because they affect fishermen without providing the usual procedural safeguards. A Council recommendation for interim measures without notice-and-comment rulemaking will be considered favorably if the short-term benefits of the measures in reducing overfishing outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants in the fishery.

(f) *OY*—(1) *Definitions.* (i) The term "optimum," with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

(ii) In national standard 1, use of the phrase "achieving, on a continuing basis, the OY from each fishery" means producing, from each fishery, a long-term series of catches such that the average catch is equal to the average OY and such that status determination criteria are met.

(2) *Values in determination.* In determining the greatest benefit to the Nation, these values that should be weighed are food production, recreational opportunities, and protection afforded to marine ecosystems. They should receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY.

(i) The benefits of food production are derived from providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) The benefits of recreational opportunities reflect the importance of the quality of the recreational fishing experience and of the contribution of recreational fishing to the national, regional, and local economies and food supplies. Such benefits also include the quality of non-consumptive fishery experiences such as ecotourism, fish watching, recreational diving, and other non-consumptive activities important to the national, regional, and local economies.

(iii) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(3) *Factors relevant to OY.* Because fisheries have finite capacities, any attempt to maximize the measures of benefit described in paragraph (f)(2) of this section will inevitably encounter practical constraints. One of these is MSY. Moreover, various factors can constrain the optimum level of catch to a value less than MSY. The Magnuson-Stevens Act's definition of OY identifies three categories of such factors: Social, economic, and ecological. Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding reductions in MSY.

(i) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Other factors that may be considered include the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(ii) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or productive capacity is uncertain, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Other factors that may be considered include the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, and the attendant increase in catch per unit of effort, alternate employment opportunities, and economies of coastal areas.

(iii) *Ecological factors.* Examples are stock size and age composition, the vulnerability of incidental or unregulated stocks in a mixed-stock fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

(ii) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of annual target harvest

levels that vary with stock size. Such target harvest levels may be prescribed on the basis of an OY control rule similar to the MSY control rule described in paragraph (c)(1)(ii) of this section, but designed to achieve OY on average, rather than MSY. The annual harvest level obtained under an OY control rule should always be less than or equal to the harvest level that would be obtained under the MSY control rule.

(iii) All fishing mortality must be counted against OY, including that resulting from bycatch, research fishing, and any other fishing activities.

(iv) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any TALFF and analyzing impacts of the management regime. There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(v) The determination of OY requires a specification of MSY, which may not always be possible or meaningful. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, the OY must still be based on the best scientific information available. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY to the extent possible (also see paragraph (c)(3) of this section).

(vi) In a mixed-stock fishery, specification of a fishery-wide OY may be accompanied by management measures establishing separate annual target harvest levels for the individual stocks. In such cases, the sum of the individual target levels should not exceed OY.

(5) *OY and the precautionary approach.* In general, Councils should adopt a precautionary approach to specification of OY. A precautionary approach is characterized by three features:

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate national standard 1, because OY was not achieved on a continuing basis.

(ii) A stock or stock complex that is below the size that would produce MSY should be harvested at a lower rate or level of fishing mortality than if the stock or stock complex were above the size that would produce MSY.

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(6) *Analysis.* An FMP must contain an assessment of how its OY specification was determined (section 303(a)(3) of the Magnuson-Stevens Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to determine the amount, if any, by which MSY exceeds OY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation. If overfishing is permitted under paragraph (d)(6) of this section, the assessment must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any species or ecologically significant unit thereof reaching a threatened or endangered status, as well as the risk of any stock or stock complex falling below its minimum stock size threshold.

(7) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(i) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(ii) *DAP.* Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(iii) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

5. In § 600.315, paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(4) and (e)(5), respectively; new paragraph (e)(3) is added; and paragraphs (c)(2), (c)(3), (e)(1) introductory text, (e)(1)(ii), and newly redesignated (e)(4) are revised to read as follows:

§ 600.315 National Standard 2—Scientific information.

* * * * *

(c) * * *

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, and the fishery (including fishing communities).

(3) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

* * * * *

(e) * * *

(1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent

biological condition of stocks and the marine ecosystems in the FMU and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation.

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(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. Information on bycatch for each fishery should also be summarized. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

* * * * *

(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

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6. In § 600.320, the last sentence of paragraph (c) is revised to read as follows:

§ 600.320 National Standard 3—Management Units.

* * * * *

(c) * * * The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

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7. In § 600.325, paragraph (c)(3)(ii) is revised to read as follows:

§ 600.325 National Standard 4—Allocations.

* * * * *

(c) * * *

(3) * * *

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

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8. In § 600.330, paragraphs (a) and (b)(1), the first sentence of paragraph (c) introductory text, the last sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) * * *

(1) *General.* The term "utilization" encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

* * * * *

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. * * *

(1) * * * Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

* * * * *

9. In § 600.340, paragraph (b)(1) is amended by revising the second sentence to read as follows:

§ 600.340 National Standard 7—Costs and Benefits.

* * * * *

(b) * * *

(1) * * * The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. * * *

* * * * *

10. Sections 600.345, 600.350, and 600.355 are added to subpart D to read as follows:

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and

(2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to

affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term "fishing community" means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term "sustained participation" means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs should examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

§ 600.350 National Standard 9—Bycatch.

(a) *Standard 9.* Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in three ways, impede efforts to achieve sustainable fisheries and the full benefits they can provide to the Nation. First, failure to include bycatch in estimating allowable catch in a directed fishery may result in unintended overfishing. Second, it can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Finally, bycatch may preclude other more productive uses of fishery resources.

(c) *Definitions*—(1) *Bycatch.* The term "bycatch" means fish that are harvested in a fishery (i.e., removed permanently from the population as a result of fishing), but that are not sold or kept for personal use. Bycatch includes economic discards, regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program.

(2) *Discard.* The term "discard" refers only to the discard of whole fish at sea or elsewhere.

(d) *Minimizing bycatch and bycatch mortality.* The priority for reducing bycatch under this standard is to minimize or avoid catching bycatch species where possible. Fish that are bycatch and cannot be avoided should, to the extent practicable, be returned to the sea alive. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils should:

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.* A review and, where necessary, improvement of data collection methods, data sources, and applications of data should be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in*

the fishery. Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative estimates.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality.* A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards, should consider the following factors:

(i) Population effects for the bycatch species.

(ii) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(iii) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects.

(iv) Effects on marine mammals and birds.

(v) Changes in fishing, processing, disposal, and marketing costs.

(vi) Changes in fishing practices and behavior of fishermen.

(vii) Changes in research, administration, and enforcement costs and management effectiveness.

(viii) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(ix) Changes in the distribution of benefits and costs.

(x) Social effects.

(4) *Implement and monitor selected management measures.* Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, implementation plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency and avoidance of duplicative effort.

(e) *Other considerations.* Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.

§ 600.355 National Standard 10—Safety of Life at Sea.

(a) *Standard 10.* Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) *General.* (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management. This standard is not meant to give preference to one method of managing a fishery over another.

(2) The qualifying phrase "to the extent practicable" recognizes that regulation necessarily puts constraints on fishing that would not otherwise exist. These constraints may create pressures on fishermen to fish under conditions that they would otherwise avoid. This standard instructs the Councils to identify and avoid those situations, if they can do so consistent with the legal and practical requirements of conservation and management of the resource.

(3) For the purposes of this national standard, the safety of the fishing vessel is considered the same as "safety of human life at sea." The safety of a vessel and the people aboard it is ultimately the responsibility of the master of that vessel. Each master makes many decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. This national standard does not replace the judgment or relieve the responsibility of the vessel master related to vessel safety. The Councils, the USCG, and NMFS, through the consultation process of paragraph (d) of this section, will review all FMPs, amendments, and regulations during their development to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

(c) *Safety considerations.* The following is a noninclusive list of safety considerations that should be considered in evaluating management measures under national standard 10.

(1) *Operating environment.* Where and when a fishing vessel operates is partly a function of the general climate and weather patterns of an area. Typically, larger vessels can fish farther offshore and in more adverse weather conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.

(2) *Gear and vessel loading requirements.* A fishing vessel operates in a very dynamic environment that can be an extremely dangerous place to work. Moving heavy gear in a seaway creates a dangerous situation on a vessel. Carrying extra gear can also significantly reduce the stability of a fishing vessel, making it prone to capsizing. An FMP should consider the safety and stability of fishing vessels when requiring specific gear or requiring the removal of gear from the water. Management measures should reflect a sensitivity to these issues and provide methods of mitigation of these situations wherever possible.

(3) *Limited season and area fisheries.* Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called "derby" fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

(d) *Consultation.* During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the FMP, FMP amendment, or regulations. Mitigation, to the extent practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

(e) *Mitigation measures.* There are many ways in which an FMP may avoid or provide alternative measures to reduce potential impacts on safety of

human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

(2) Providing for seasonal or trip flexibility to account for bad weather (weather days).

(3) Allowing for pre- and post-season "soak time" to deploy and pick up fixed gear, so as to avoid overloading vessels with fixed gear.

(4) Tailoring gear requirements to provide for smaller or lighter gear for smaller vessels.

(5) Avoiding management measures that require hazardous at-sea inspections or enforcement if other comparable enforcement could be accomplished as effectively.

(6) Limiting the number of participants in the fishery.

(7) Spreading effort over time and area to avoid potential gear and/or vessel conflicts.

(8) Implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.

[FR Doc. 97–20588 Filed 7-31-97; 2:30 pm]

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV97–930–3 NC]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], this notice announces the Agricultural Marketing Service's (AMS) intention to request a revision to a currently approved information collection for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

DATES: Comments on this notice must be received by October 3, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, P.O. Box 96456, room 2525–S, Washington DC 20090, Tel: (202) 720–5053, Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

OMB Number: 0581–0177.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision and approval of the collection of information under the marketing order for tart cherries.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674), (AMAA), as amended, industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the orders' operations and issue regulations recommended by a committee of representatives from each commodity industry.

Under the order, the Cherry Industry Administrative Board (Board) was established. The Board is the organization responsible for local administration of the marketing order.

The Order is administered by the 18-member Board, comprised of 17 producers and handlers and one public member, plus alternates for each. The members will each serve for a three-year term of office. The consecutive terms of office for all members and alternates will be limited to two three-year terms. Since the Board terms will be staggered, approximately one-third of the Board positions will be up for reelection each year. Nominations and elections will be conducted in a two-part process via the U.S. Mail on an annual basis. The public member and alternate will be selected by the Board every three years.

Members and alternates are appointed by the Secretary to administer the marketing order program locally, and are selected from nominees submitted by tart cherry producers and handlers in the production area. The marketing order, and rules and regulations issued thereunder, authorize the Board to require producers, handlers and processors to submit certain information.

The Board has developed forms as a convenience to persons who are required to file information with the Board relating to tart cherry inventories, shipments, diversions, and other information needed to carry out the purposes of the Act and the Order. Since this Order regulates the canned and frozen form of tart cherries, reporting requirements will be in effect all year. These forms require a minimum of information necessary to effectively carry out the requirements of the Order, and their use is necessary to fulfill the intent of the Act as expressed in the Order.

The form being added to the currently approved tart cherry information collection is a producer list for referendum form. This form will be used by handlers to report the names, addresses, and tonnage of tart cherries produced by the growers whose cherries the handler handles. This information will be used by the Secretary to verify that referendum ballots are distributed to the greatest number of tart cherry growers possible. This form will be completed by the 45 handlers regulated under the marketing order. The time required to complete this form is estimated to average 20 minutes per response. Using this form increases the estimated total annual burden on handlers, by 14 hours, from 990 hours to 1004 hours. Also, the number of total annual responses supplied by handlers for the entire tart cherry information collection increases from 5,772 to 5,817.

The information collected is used only by authorized representatives of the Department of Agriculture (USDA), including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Board. AMS is the primary user of the information and authorized committee employees are the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1726 hours per response.

Respondents: Tart cherry producers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 1,268.

Estimated Number of Responses per Respondent: 4.587.

Estimated Total Annual Burden on Respondents: 1004 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the proposed tart cherry marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity

of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0177 and Marketing Order No. 930, and be mailed to Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Post Office Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th & Independence Avenue SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 29, 1997.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–20460 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Statements; Availability, etc.: Eldorado National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On November 7, 1989, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze management of off-highway vehicle use in the Rock Creek area, Eldorado National Forest, Georgetown Ranger District, El Dorado County, California. An update was filed in the **Federal Register** on March 5, 1996 to update the expected date for release of the draft EIS (DEIS), provide a list of issues and alternatives considered, and to note that the scope was expanded to include non-motorized uses (hiking, equestrians, and mountain bikes) in response to public comments. Notice of availability of the Rock Creek Recreational Trails DEIS was filed in the **Federal Register** on April 26, 1996. In addressing comments on the DEIS, the Forest Service has made some changes to alternatives and is preparing a revised draft EIS (RDEIS). Changes to the alternatives include the addition of some new routes, addition of vegetation treatments to enhance deer habitat, and a modified seasonal closure of the critical deer winter range in the preferred alternative. This notice is being filed to update the notice of intent and to notify interested parties that the RDEIS will soon be available for comment.

DATES: The RDEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 1997. At that time EPA will publish a notice of availability in the **Federal Register**. The public comment period on the RDEIS will be 45 days from the date of EPA's notice of availability in the **Federal Register**.

ADDRESSES: Raymond LaBoa, District Ranger, Georgetown Ranger District, Eldorado National Forest, ATTN: Rock Creek EIS, 7600 Wentworth Springs Road, Georgetown, California 92634.

FOR FURTHER INFORMATION CONTACT: Direct questions about the EIS to Linda Earley, Interdisciplinary Team Leader, Georgetown Ranger District, 7600 Wentworth Springs Road, Georgetown, California 95634; phone (916) 333–4312.

SUPPLEMENTARY INFORMATION: Work on the EIS began in 1989 with a study of impacts to the Pacific Deer Herd. Since that time the deer study has been completed, issues identified, alternative management plans developed, and extensive data collection and analysis conducted. The draft Rock Creek Recreational Trails EIS was released for public comment in April 1996.

The draft EIS analyzed alternative management plans for all types of recreation uses on the trails: hiking, equestrians, mountain bikes, and OHVs. The need to look at all uses of the trails arose from concerns that other types of recreation use may have some of the same impacts as OHVs; as well as concerns about compatibility of uses. Another concern identified in the analysis is open road densities which exceed limits established in the *Eldorado National Forest Land and Resource Management Plan* (LRMP). Because the EIS analyzes road and trail densities, and because the EIS proposes designation of both open and closed roads for OHV use, it was decided that proposals for road closures to meet the LRMP management direction would be also analyzed in this EIS.

The following issues identified during scoping for this EIS were used to develop and compare alternative management plans.

1. Erosion: The bare soils on road and trail surfaces create a potential for erosion. The amount of erosion may be affected by total miles of roads and trails, soil type, trail location, design, maintenance, grade, vegetative cover, and use in excessively wet or dry conditions.

2. Water Quality: Erosion of soils can impact water quality by adding sedimentation to streams. Sedimentation may be affected by trail location and design, stream crossings, and proximity of trails to the stream. Another potential impact to water quality from use of trails is the risk of oil or fuel spills at stream crossings.

3. Wildlife Species: Use of the trails has the potential to impact wildlife species primarily through disturbance by human presence or noise. Road and trail densities influence the potential disturbance by providing increased or decreased access into the area.

4. Air Quality: Air quality may be affected by emissions from motorized vehicles as well as dust from use of roads and trails.

5. Noise: The sound of OHVs is unacceptable to many people, and therefore may have a negative impact on adjacent landowners and the experience of their Forest users. The sound of OHVs may also contribute to disturbance of wildlife.

6. Opportunity and Quality of the Recreation Experience: The quality of the recreation experience may be affected by: the condition, variety, and level of challenge of the trails; the availability of staging areas and the level of development there; other uses allowed on the trails; and the aesthetics of the trail experience. Opportunity for recreation is determined by the trail mileage available and uses allowed on each; the number and size of recreation events allowed; and the frequency and duration of trail closures.

7. Health and Safety: Safety may be affected by a variety of factors. Width of trails may affect speeds traveled, and therefore risk of accidents. Intersections of roads and trails may pose increased risks of accidents. Combination of equestrian and mountain bike use on trails may pose a risk since bikes come up quietly and may startle horses. Two-way traffic poses a risk for OHVs since they cannot hear each other coming, which could result in a head-on collision. Chipsealing of road surfaces poses a risk to equestrians due to the slippery contact between the chipseal and the horseshoes. Trail structures such as gabions and cinderblocks may also pose a risk to horses. Health may be affected by availability of drinking water and sanitation facilities for recreationists; or by impacts to air quality and water quality.

8. Risk of Fire: Risk of fire is increased by human activity such as campfires and smoking that may be associated with use of trails. Internal combustion

engines, such as OHVs also increase the risk, particularly if proper spark arresters are not in place.

9. Funding: Levels of funding available affects the ability to maintain trails properly, the number of trails that can be maintained, ability to construct trails, ability to effectively rehabilitate closed trails, the amount of monitoring that can be conducted, and the level of law enforcement that can be maintained. These, in turn, affect the ability to implement the management plan and, therefore, to protect the environment and the quality of the recreation experience.

The following alternatives are analyzed in the draft EIS:

Alternative 1—No Action: This alternative would continue the current management of the Rock Creek Trails. Most trails in the area are multiple use, open to all four use types: hiking, equestrians, mountain bikes, and OHVs. There are approximately 136 miles of multiple use routes (roads and trails) and 5 miles of routes restricted to non-motorized uses. The current management plan includes closure of the critical deer winter range to OHVs and mountain bikes from November 1 to May 1 each year. Trails are also closed to OHVs during wet weather conditions.

Alternative 2—No OHV Use: OHV use would be eliminated in this alternative. There would be approximately 46 miles of non-motorized routes available. Approximately 33 miles of roads would be closed. Trails would be closed to equestrians and mountain bikes during wet weather conditions, and staging areas in the critical deer winter range would be closed from February 1 to May 1. Up to two large recreation events, with up to 300 participants, would be allowed each year for each non-motorized use type.

Alternative 3—Increased Multiple Use Recreation: This alternative reduces trail closures and allows the maximum trail density. Approximately 130 miles of multiple use routes would be available, and 15 miles of non-motorized routes. Approximately 30 miles of roads would be closed. There would be no closure of the critical deer winter range. Wet weather closures would apply to OHVs, equestrians, and mountain bikes. Up to two large recreation events per year, with up to 500 participants each, would be allowed for each use type.

Alternative 4—Separated Multiple Use Recreation: This alternative addresses concerns about shared use of trails by different types of uses. The system would include approximately 86 miles of multiple use routes, 17 miles of non-motorized routes, 5 miles of hiking only routes, and 11 miles of hiking and equestrian routes. Approximately 28 miles of roads would be closed. Staging areas in the critical deer winter range would be closed from February 1 to May 1. Trails would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. One large recreation event would be allowed per year for each use type, with up to 300 participants in each.

Alternative 5—Reduced Multiple Use Recreation: This alternative includes approximately 71 miles of multiple use routes and 28 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes in the critical deer winter range would be closed to all uses from November 10 to May 1 of each year. Roads and trails would be closed to OHVs, equestrians, and mountain bikes during the Forest seasonal road closures (generally November through March). Trails would be closed to OHVs during Forest fire restrictions (generally August and September). Large recreation events with over 75 people involved would be prohibited.

Alternative 6—"Carrying Capacity" Alternative: This alternative was developed based on a review of effects of other alternatives. The goal of the alternative is to maximize recreation opportunity while providing protection of the natural resources.The system would include approximately 111 miles of multiple use routes, and 14 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. Vegetation treatments, including mastication of brush and understory burning, would be implemented on the critical deer winter range to improve the quantity and quality of forage for the wintering deer. The critical deer winter range would be divided into two zones: north and south. Routes in the south would be closed to OHVs and mountain bikes from November 10 to May 1 each year. Deer use would be monitored and the seasonal deer closure reevaluated in five years. Up to two recreation events, with up to 300 participants, would be allowed each year for each type of use.

Raymond LaBoa, District Ranger, Georgetown Ranger District, Eldorado National Forest, is the responsible official.

The revised draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in September 1997. At that time the EPA will publish a notice of availability of the revised draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register.** It is very important that reviewers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Comments received, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the Agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within five days.

After the comment period ends on the revised draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The

final EIS is scheduled to be completed in January 1998. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal.

Dated: July 24, 1997.

Raymond E. LaBoa,

District Ranger, Georgetown Ranger District, Eldorado National Forest.

[FR Doc. 97–20461 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sugarbush Resort EIS, Ski Area Improvement and Development Analysis, Green Mountain National Forest; Washington County, VT

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose effects of alternative decisions it may make to allow upgrading and/or development of recreational facilities within the existing permit boundaries of the Sugarbush Resort, on the Rochester Ranger District of the Green Mountain National Forest.

DATES: Written comments concerning the scope of the analysis should be received on or before September 19, 1997. The Forest Service predicts the Draft EIS will be filed during late Winter 1998 and the Final EIS during late Spring 1998.

ADDRESSES: Send written comments to Beth LeClair, Rochester District Ranger, Green Mountain National Forest, RR #2 Box 35, Rochester, Vermont 05767. James W. Bartelme, Forest Supervisor, Green Mountain National Forest, is the Responsible Official for this EIS.

FOR FURTHER INFORMATION CONTACT: Bob Bayer, Project Coordinator, Manchester Ranger District, Green Mountain National Forest—(802) 362–2307.

SUPPLEMENTARY INFORMATION: The Special Use Permittee, Sugarbush Resort Holdings, Inc. (SRHI), is proposing that improvements to the Sugarbush ski area be made which include upgrading existing facilities and constructing new facilities. The scope of their proposal includes eleven categories: (1) Development of tree skiing and snowboarding at Lincoln Peak; (2) expanded snowmaking on seven existing trails at Lincoln Peak; (3) the connection of Lincoln Peak and Mount Ellen snowmaking systems with two air pipelines, (4) upgrade of two chair lifts and installation of a tow and magic carpet at Lincoln Peak; (5) installation of night lighting along Easy Rider Trail and the Village Quad at Lincoln Peak to facilitate night skiing; (6) trail expansions at Lincoln Peak and Mount Ellen; (7) construction of a seasonal performing arts center at Lincoln Peak; (8) installation of one view deck at Mount Ellen; (9) expansion of an existing lodge and construction of a new lodge at Lincoln Peak; (10) exchanging approximately 243 acres of privately owned land and/or moneys that in total equal the appraised value of two parcels of National Forest System land (a 57-acre parcel adjacent to their existing permit area at the base of Lincoln Peak which would be used as a site for a new hotel, and a 32-acre parcel surrounded by private property in Slide Brook); and (11) increasing the current comfortable carrying capacity stipulated in SRHI's special use permit from 8,650 skiers to 10,550 skiers.

The aforementioned categories constitute all actions proposed on National Forest System lands and falling within the existing permit area boundary. Most of the elements of this proposal are part of the 1996 Sugarbush Resort Master Plan Update. Because this plan also includes "reasonably forseeable" development activities that could further impact resources in the project area, this EIS will also address the cumulative impacts of the full implementation of the plan. The applicant's proposal also would involve development on adjacent private lands which have land use jurisdictions outside of Forest Service control, and therefore are not subject to NEPA analysis.

The site-specific environmental analysis provided by the EIS will assist the Responsible Official in determinining which improvements are needed to meet the following objectives: improve the quality and efficiency of the services and facilities offered at the resort; allow SRHI to provide a more complete, higher quality year-round recreational experience; and sustain the resource uses and amenity values which local communities depend on and enjoy.

Public participation will be incorporated into preparation of the EIS under the provisions of NEPA. The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft EIS. A substantial amount of scoping has been completed under an earlier Environmental Assessment. Information gained from that scoping effort was used to determine that an EIS was needed. Major issues identified include: (1) Analyzing all portions of proposed developments at Sugarbush Resort at one time, (2) including the hotel and land exchange in the analysis, (3) justifying the need for night lighting, (4) analyzing impacts to wildlife habitat, (5) increasing traffic associated with the expansion, (6) increasing air and noise pollution, and (7) analyzing impacts of night lighting to the view of the night sky. The Forest Service will be seeking additional scoping information, comments, and assistance from Federal, State, and local agencies, as well as other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing the EIS. Public meetings will be held to assist in the public involvement process. The exact locations and dates of these meetings will be published in the local newspapers at least two weeks in advance.

Preliminary alternatives include the applicant's proposal (described above) and No Action, which in this case is continuing current administration of the ski area. Additional alternatives will be developed based on scoping comments. The Responsible Official will be presented with a range of feasible and practical alternatives.

Permits and licenses required to implement the proposed action will, or may, include the following: Section 404 permit from the Army Corps of Engineers; consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act; compliance with the Act 250 process for the State of Vermont; as well as cooperation from other Local, State, or Federal agencies.

The Forest Service will seek comments on the Draft EIS for a period of at least 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Comments will be summarized and responded to in the Final EIS.

The Forest Service believes it is important, at this early stage, to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the Draft EIS will be regarded as public information.

Dated: July 29, 1997.

James W. Bartelme,

Forest Supervisor.

[FR Doc. 97–20437 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review: Not later than the last day of August 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Oil Country Tubular Goods, A–357–810	8/1/96–7/31/97
Argentina: Seamless Pipe, A–357–809	8/1/96–7/31/97
Australia: Corrosion-Resistant Steel Flat Products, A–602–803	8/1/96–7/31/97
Belgium: Cut-to-Length Carbon Steel Plate, A–423–805	8/1/96–7/31/97
Belgium: Phosphoric Acid, A–423–602	8/1/96–7/31/97
Brazil: Cut-to-Length Carbon Steel Plate, A–351–817	8/1/96–7/31/97
Brazil: Seamless Pipe, A–351–826	8/1/96–7/31/97
Canada: Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/96–7/31/97
Canada: Cut-to-Length Carbon Steel Plate, A–122–823	8/1/96–7/31/97
Canda: Magnesium, A–122–814	8/1/96–7/31/97
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/96–7/31/97
France: Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/96–7/31/97
France: Industrial Nitrocellulose, A–427–009	8/1/96–7/31/97
Germany: Cold-Rolled Carbon Steel Flat Products, A–428–814	8/1/96–7/31/97
Germany: Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/96–7/31/97
Germany: Cut-to-Length Carbon Steel Plate, A–428–816	8/1/96–7/31/97
Germany: Seamless Pipe, A–428–820	8/1/96–7/31/97
Israel: Phosphoric Acid, A–508–604	8/1/96–7/31/97
Italy: Grain Oriented Electrical Steel, A–475–811	8/1/96–7/31/97
Italy: Oil Country Tubular Goods, A–475–816	8/1/96–7/31/97
Italy: PTFE Resin, A–475–703	8/1/96–7/31/97
Italy: Seamless Pipe, A–475–814	8/1/96–7/31/97
Japan: Acrylic Sheet, A–588–055	8/1/96–7/31/97
Japan: Brass Sheet & Strip, A–588–704	8/1/96–7/31/97
Japan: Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/96–7/31/97
Japan: Oil Country Tubular Goods, A–588–835	8/1/96–7/31/97
Japan: PTFE Resin, A–588–707	8/1/96–7/31/97
Kazakhstan: Titanium Sponge, A–834–803	8/1/96–7/31/97
Mexico: Cement, A–201–802	8/1/96–7/31/97
Mexico: Cut-to-Length Carbon Steel Plate, A–201–809	8/1/96–7/31/97
Mexico: Oil Country Tubular Goods, A–201–817	8/1/96–7/31/97
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/96–7/31/97
Romania: Cut-to-Length Carbon Steel Plate, A–485–803	8/1/96–7/31/97
Russia: Titanium Sponge, A–823–803	8/1/96–7/31/97
South Korea: Cold-Rolled Carbon Steel Flat Products, A–580–815	8/1/96–7/31/97
South Korea: Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/96–7/31/97
South Korea: Oil Country Tubular Goods, A–580–825	8/1/96–7/31/97
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/96–7/31/97

	Period
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/96–7/31/97
Thailand: Malleable Pipe Fittings, A–549–601	8/1/96–7/31/97
The Netherlands: Brass Sheet & Strip, A–421–701	8/1/96–7/31/97
The Netherlands: Cold-Rolled Carbon Steel Flat Products, A–421–804	8/1/96–7/31/97
The People's Republic of China: Petroleum Wax Candles, A–570–504	8/1/96–7/31/97
The People's Republic of China: Sulfanilic Acid, A–570–815	8/1/96–7/31/97
The Ukraine: Titanium Sponge, A–823–803	8/1/96–7/31/97
The Ukraine: Uranium, A–823–802	8/1/96–7/31/97
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/96–7/31/97
Turkey: Aspirin, A–489–602	8/1/96–7/31/97
Suspension Agreements	
Japan: Color Negative Photographic Paper, A–588–832	8/1/96–7/31/97
The Netherlands: Color Negative Photographic Paper, A–421–806	8/1/96–7/31/97
Countervailihng Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/96–12/31/96
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/96–12/31/96
Canada: Live Swine, C–122–404	4/1/96–3/31/97
Canada: Pure Magnesium, C–122–815	1/1/96–12/31/96
Canada: Alloy Magnesium, C–122–815	1/1/96 -12/31/96
France: Corrosion-Resistant Carbon Steel, C–427–810	1/1/96–12/31/96
Germany: Cold-Rolled Carbon Steel Flat Products C–428–817	1/1/96–12/31/96
Germany: Corrosion-Resistant Carbon Steel, C–428–817	1/1/96–12/31/96
Germany: Cut-to-Length Carbon Steel Plate, C–428–817	1/1/96–12/31/96
Israel: Industrial Phosphoric Acid, C–508–605	1/1/96–12/31/96
Italy: Seamless Pipe, C–475–815	1/1/96–12/31/96
Italy: Oil Country Tubular Goods, C–475–817	1/1/96–12/31/96
Malaysia: Extruded Rubber Thread, C–577–806	1/1/96–12/31/96
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/96–12/31/96
South Korea: Cold-Rolled Carbon Steel Flat Products, C–580–818	1/1/96–12/31/96
South Korea: Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/96–12/31/96
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/96–12/31/96
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/96–12/31/96
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/96–12/31/96

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistance Secretary for Import Administration, International Trade Administrative, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of AUGUST 1997. If the Department does not receive, by the last day of AUGUST 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 29, 1997.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Group III.

[FR Doc. 97–20493 Filed 8–1–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Postponement of Final Determination; Certain Cut-to-Length Carbon Steel Plate From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of sales at less than fair value.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Eugenia Chu, or Yury Beyzarov, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th. Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

The Applicable Statute And Regulations

Unless other indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1996.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on July 18, 1997, Azovstal Iron and Steel Works (Azovstal), Ilyich Iron and Steel Works (Ilyich) and Alchevsk Iron and Steel Works (Alchevsk), producers of subject merchandise; requested a thirty-day extension of the final determination.

Azovstal and Ilyich account for a significant proportion of exports of the subject merchandise. In addition, we are not aware of any compelling reasons for denying this request. However, due to the complexity of the issues involved in the case, including surrogate values, Ukraine's status as a market economy country, and scope of the subject merchandise, we are postponing the final determination in this investigation until 135 days after the publication of the preliminary determination. Therefore, the final determination will be due no later than October 24, 1997. Suspension of liquidation will be extended in accordance with section 733(d) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 Fed. Reg. 30326, 30326 (June 14, 1996).

In accordance with 19 CFR 353.38, case briefs must be submitted to the Assistant Secretary for Import Administration no later than Friday, August 29, 1997, and rebuttal briefs, no later than Friday, September 5, 1997. A list of authorities used and a summary of the arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments made in case or rebuttal briefs.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Request should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs.

This notice of postponement is published pursuant to 19 CFR 353.20(b)(2).

Dated: July 29, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20488 Filed 8–1–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–803]

Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Hansen, Vincent Kane, or Sally Hastings, Office of Antidumping/ Countervailing Duty Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1276, 482–2815, or 482–3464, respectively.

Preliminary Determination:

The Department preliminarily determines that countervailable subsidies are being provided to Caribbean Ispat Limited ("CIL"), a producer and exporter of steel wire rod from Trinidad and Tobago. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** on March 24, 1997 (62 FR 13866), the following events have occurred.

On April 1, 1997, we issued countervailing duty questionnaires to the Government of Trinidad and Tobago ("GOTT") and to CIL concerning petitioners' allegations. We received responses to our questionnaires from CIL and the GOTT on May 27 and May 29, 1997, respectively. We issued supplemental questionnaires to parties on June 13, 1997, and received responses on June 30, 1997. On May 2, 1997, we postponed the preliminary determination in this investigation until July 28, 1997 (62 FR 25172, May 8, 1997).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This

product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Trinidad and Tobago is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of wire rod from Trinidad and Tobago materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Trinidad and Tobago of the subject merchandise (62 FR 23485).

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Subsidies Valuation Information

Period of Investigation

The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service ("IRS") on the industry-specific average useful life of assets, in determining the allocation period for nonrecurring subsidies. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* ("*General Issues Appendix*") 58 FR 37217, 37226 (July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) ("*British Steel*"), the U.S. Court of International Trade (the "Court") ruled against this methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for purposes of this preliminary determination, the Department has calculated a company-specific AUL. Based on information provided by respondents, the Department has preliminarily determined that the appropriate allocation period for CIL is 15 years.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether or not that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in world markets for the product under consideration.

In start up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise.

For a more detailed discussion of the Department's equityworthiness criteria see the

General Issues Appendix at 37244.

Petitioners allege that the Iron and Steel company of Trinidad and Tobago Limited ("ISCOTT"), the predecessor to CIL, was unequityworthy from 1980–1995. In our initiation notice (62 FR 13886, 13868; March 24, 1997), we stated that we would investigate ISCOTT's equityworthiness for the period 1983–1990. We have now undertaken that examination, consistent with our past practice. *See, Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 8, 1993) ("*Steel from France*").

For this investigation, we have preliminarily determined that ISCOTT is unequityworthy during the period 1986 through 1994. For a discussion of this determination, see the section of this notice on "Equity Infusions."

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists, *i.e.*, the price of publicly traded shares of the company's stock or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *General Issues Appendix* at 37239. Following this methodology, equity infusions made into an unequityworthy firm are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing

from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts;
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

In start up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise. For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Steel from France* at 37304, and *Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom* 58 FR 37393, 37395 (July 9, 1993).

Petitioners have alleged that ISCOTT was uncreditworthy from 1980–1995. In our initiation notice (62 FR 13866, 13868; March 24, 1997), we stated that we would investigate ISCOTT's creditworthiness for the period 1983–1990. We did not include the years prior to 1983 because we determined that investments in and loans to the company through 1982 were on terms consistent with commercial considerations in *Carbon Steel Wire Rod From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* 49 FR 480 (January 4, 1984) ("*Wire Rod I*") and petitioners did not provide any new evidence to lead us to change our previous determination.

Regarding the period after 1990, petitioners provided no evidence in the petition to support their claim that ISCOTT was uncreditworthy. On June 13, 1997, petitioners supplemented their original allegation with financial information contained in the GOTT's May 29, 1997 response.

Based on a review of petitioners' June 13, 1997 submission, as well as the information in the responses, we preliminarily determine that ISCOTT was uncreditworthy during the period 1985–1994. ISCOTT did not show a profit for any year during this period and continued to rely upon support from the GOTT to meet fixed payments. The company's gross profit ratio was consistently negative in each of the years in which it had sales. Additionally, the company's operating profit (net income before depreciation, amortization, interest and financing charges) was consistently negative. The firm continued to show an operating loss in each year it was in production, and was never able to cover its variable costs.

Regarding 1983, 1984, 1995, and 1996, we did not examine ISCOTT's creditworthiness because ISCOTT did not receive any countervailable loans, equity infusions, or nonrecurring grants in those years.

Discount Rates

We have calculated the long-term uncreditworthy discount rates for the period 1985 through 1994, to be used in calculating the countervailable benefit for nonrecurring grants and equity infusions in this investigation because the respondent did not incur any debt appropriate for use as discount rates, following the methodology described in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy* ("*GOES*") 59 FR 18357, 18358 (April 18, 1994). Specifically, we took the highest prime term loan rate available in Trinidad and Tobago in each year as listed in the *Central Bank of Trinidad and Tobago: Handbook of Key Economic Statistics* and added to this a risk premium of 12% of the median prime lending rate to establish the uncreditworthy discount rate.

Privatization Methodology

In the *General Issues Appendix*, we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a company (privatization).

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (*i.e.*, in this case 1981 for CIL) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. In the current investigation, we are analyzing the privatization of ISCOTT in 1994.

Based upon our analysis of the petition and responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Export Allowance Under Act No. 14

Under the provisions of Act No. 14 of 1976, as codified in Section 8(1) of the Corporation Tax Act, companies in Trinidad and Tobago with export sales may deduct an export allowance in calculating their corporate income tax. The allowance is equal to the ratio of export sales over total sales multiplied by net income. Regardless of the magnitude of the export allowance, however, companies must pay a minimum income tax in the amount of the business levy or the corporate income tax, whichever is greater.

A countervailable subsidy exists within the meaning of section 771(5A) of the Act where there is a financial contribution from the government which confers a benefit and is specific within the meaning of section 771(5A) of the Act.

We have determined that the export allowance is a countervailable subsidy within the meaning of section 771(5) of the Act. The export allowance provides a financial contribution because in granting it the GOTT forgoes revenue that it is otherwise due. The export allowance is specific, under section 771(5A)(B), because its receipt is contingent upon export performance.

CIL made a deduction for the export allowance on its 1995 income tax return, which was filed during the POI. Because the export allowance is claimed and realized on an annual basis in the course of filing the corporate income tax return, we have determined that the benefit from this program is recurring. To calculate the countervailable subsidy from the export allowance, we divided CIL's tax savings during the POI by the total value of its export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy from this program to be 3.45 percent *ad valorem*.

B. Equity Infusions

In 1978, ISCOTT and the GOTT entered into a Completion and Cash Deficiency Agreement ("CCDA") with

several private commercial banks in order to obtain a part of the financing needed for construction of ISCOTT's plant. Under the terms of the CCDA, the GOTT was obligated to provide certain equity financing toward completion of construction of ISCOTT's plant, to cover loan payments to the extent not paid by ISCOTT, and to provide cash as necessary to enable ISCOTT to meet its current liabilities.

During the period from 1983 to 1989, a period of continuing losses, ISCOTT and the GOTT commissioned several studies to determine the financially preferable course of action for the company. Options included a shut-down of the plant, lease or sale of the plant, or continued GOTT operation of the plant. In 1983, a Committee appointed by the Cabinet concluded that it would cost ISCOTT more to shut the plant down than to keep it in operation. In 1985, recognizing that ISCOTT's management lacked the technical expertise to operate the plant efficiently, the GOTT signed a training, technical and management contract with two established international steel producers, Voest Alpine and Neue Hamburger Stahlwerke ("NHSW"), to increase ISCOTT's production efficiency. In 1987, the GOTT commissioned the International Finance Corporation ("IFC") to evaluate ISCOTT's prospects and recommend alternatives. The IFC completed its evaluation in August of 1987 and recommended that the GOTT enter into negotiations aimed at leasing ISCOTT's plant to a private producer.

During 1988, the GOTT conducted lease negotiations with NHSW but late in that year the negotiations broke down. P.T. Ispat Indo ("Ispat"), a company affiliated with CIL, then came forward and expressed an interest in leasing the plant. In a February 13, 1989 letter to the GOTT, the IFC expressed its support for lease of the plant to Ispat. On April 8, 1989, the GOTT and Ispat reached agreement on a 10-year lease agreement with an option for Ispat to purchase the assets after five years.

In December of 1994, CIL, the company created by Ispat to lease and operate the plant, exercised the purchase option and purchased the plant. The purchase price was based on an independent evaluation by a private consultant, as specified in the Plant Lease Agreement, less credits that CIL received for improvements made in the plant. The Plant Sale Agreement committed CIL to make additional expenditures on the plant for environmental and production upgrades.

In *Wire Rod I*, the Department determined that payments or advances made by the GOTT to ISCOTT during its start-up years were not countervailable. In making this determination, the Department took into consideration the fact that it is not unusual for a large, capital intensive project to have losses during the start-up years, the fact that several independent studies forecast a favorable outcome for ISCOTT, and the fact that ISCOTT enjoyed several important natural advantages. On these bases, advances to ISCOTT through April of 1983, the end of the original POI, were found to be not countervailable.

Subsequent to the POI in *Wire Rod I*, ISCOTT continued to incur significant losses. In each of the years from 1983 through 1994, it recorded losses ranging from TT $142,600,000 to TT $376,700,000 with accumulated losses during this period amounting to TT $1,611,700,000. In fact, the company did not show a profit in any of its years of operation.

Yet, despite these negative results and a worldwide downturn in the steel industry, the GOTT continued to invest in ISCOTT. In each of the years from 1983 to 1994, the GOTT made advances to ISCOTT ranging from TT $33,027,000 to TT $433,633,000 with an overall total for these years of TT $1,787,466,000. These advances were made in accordance with the terms of the CCDA, which obligated the GOTT to cover loan payments and meet current operating expenses to the extent that ISCOTT was unable to meet these obligations.

Given the Department's decision in *Wire Rod I* that the GOTT's initial decision to invest in ISCOTT and its additional investments through the first quarter of 1983 were consistent with commercial considerations, the issue presented in this investigation is whether and at what point the GOTT ceased to behave as a reasonable private investor. In our view, despite the favorable factors underlying the earlier investment decisions, at some point in a succession of heavy losses such as those incurred by ISCOTT, a private investor would have reached the conclusion that further investment in the company was not warranted. For the reasons explained below, we determine that the advances made to ISCOTT after 1985 were inconsistent with the usual investment practice of a private investor.

As detailed in *Wire Rod I*, ISCOTT started operations in 1981. According to studies supporting the initial decision to invest, it was reasonable to expect that the company would experience difficulties in start-up. In a developing country such as Trinidad and Tobago, personnel with the skill and expertise required to operate a large steel plant were not readily available. Thus, the learning curve for the management and operation of the plant was expected to be prolonged.

Despite the fact that the expectations for these early years were low, the GOTT demonstrated its continuing concern about the viability of the venture. In 1983, in light of ISCOTT's deteriorating financial condition and changing market expectations, the GOTT established a Committee to study several options for the future of the company, including liquidation of ISCOTT. While the Committee's report mentions factors that likely would not have been taken into consideration by a private investor, such factors do not appear to have influenced the Committee's recommendation. (Since the report and the recommendation of the Committee are business proprietary, they are not discussed here. The Department's review of the report is contained in a July 24, 1997, business proprietary memorandum from team to Richard W. Moreland, Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group I ("*Equityworthiness Memorandum*"), the public version of which is in the public file of the Central Records Unit, HCHB Room B–099 of the Department of Commerce.)

Consistent with the recommendations made in the report, the GOTT continued to support ISCOTT's operations. In 1984, although the company still operated at a loss, revenues and cash flow from operations both improved. However, that trend was shortlived. In 1985, ISCOTT suffered significant losses. These losses were of such a magnitude that a reevaluation of the company's prospects was warranted before committing further funds to ISCOTT. By the end of 1985, the company had accumulated losses of TT $1,331,842,000 and outstanding debt of TT $1,277,845,000 of which TT $718,122,000 was owed to the GOTT. A private investor considering investment in ISCOTT at this time would have concluded that acceptable returns on investment were not likely to occur within a reasonable period of time. It is our opinion that any investment in ISCOTT after 1985 would not have been consistent with the usual investment practice of private investors.

Further, we are not persuaded by the GOTT's claim that a default on the loan would have resulted in an acceleration of the loan. In view of certain provisions in the CCDA, the GOTT apparently could have avoided an acceleration of

the loan in the event of default. (Because these provisions are business proprietary, however, we have not included them in this notice. Relevant details of the Department's discussion of these provisions are recorded in the *Equityworthiness Memorandum*.)

Therefore, in view of the large and continued losses in the years prior to 1986, we preliminarily determine that GOTT's advances to ISCOTT in 1986 and in the years that followed through 1994 constitute countervailable subsidies under section 771(5) of the Act. These advances were inconsistent with the usual investment practice of private investors and constituted specific financial contributions in which a benefit was conferred.

To calculate the benefit, we followed the "Equity Methodology" described above. The benefit allocated to the POI was adjusted according to the "Privatization Methodology" described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we calculated a subsidy of 11.37 percent.

C. Benefits Associated With the 1994 Sale of ISCOTT's Assets to CIL

In December 1994, after all of ISCOTT's manufacturing activities had been sold, ISCOTT was nothing but a shell company with liabilities exceeding its assets. CIL, on the other hand, had purchased most of ISCOTT's assets without being burdened by ISCOTT's liabilities.

The liabilities remaining with ISCOTT after the sale of productive assets to CIL had to be repaid, assumed, or forgiven. In 1995, the National Gas Company of Trinidad and Tobago Limited ("NGC") and the National Energy Corporation of Trinidad and Tobago Limited ("NEC"), a wholly owned subsidiary of NGC, wrote off loans owed to them by ISCOTT totaling TT $77,225,775. Similarly, Trinidad and Tobago National Oil Company Limited ("TRINTOC") wrote off debts owed by ISCOTT totaling TT $10,492,830 as bad debt. While no specific act eliminated this debt, indeed ISCOTT still had a residual accounts payable balance on its books in 1996, CIL (and consequently the subject merchandise) received a benefit as a result of the debt being left behind in ISCOTT.

Treating these liabilities as a subsidy to CIL is consistent with the Department's determination in *GOES* at 18359. In that case, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. In *GOES*, a substantial portion of the liabilities and the losses associated with the assets were not distributed to ILVA. Instead, they remained behind in Terni Acciai Speciali, a main operating unit of Finsider.

In this case, to calculate the benefit during the POI, we used our standard grant methodology and applied an uncreditworthy discount rate. The debt outstanding after the December 1994 sale of assets to CIL (adjusted as described below) was treated as grants received at the time of the sale of the assets.

After the 1994 sale of assets, certain non-operating assets (*e.g.*, cash and accounts receivable) remained in ISCOTT. These assets have been used to fund repayment of ISCOTT's remaining accounts payable. In order to account for the fact that certain assets, including cash, were left behind in ISCOTT, we have subtracted this amount from the liabilities outstanding after the 1994 transfer sale of assets.

The benefit allocated to the POI was adjusted according to the "Privatization Methodology" described above. The adjusted amount was divided by CIL's total sales of all products during the POI. On this basis, we determine the estimated net subsidy to be 1.22 percent *ad valorem* for CIL.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Import Duty Concessions Under Section 56 of the Customs Act

Section 56 of the Customs Act of 1983 provides for full or partial relief from import duties on certain machinery, equipment, and raw materials used in an approved industry. The approved industries that may benefit from this relief are listed in the Third Schedule to Section 56. In all, 76 industries are eligible to qualify for relief under Section 56.

Companies in these industries that are seeking import duty concessions apply by letter to the Tourism and Industries Development Company, which reviews the application and forwards it with a recommendation to the Ministry of Trade and Industry. If the Ministry of Trade and Industry approves the application, the applicant receives a Duty Relief License, which specifies the particular items for which import duty concessions have been authorized. CIL received import duty exemptions under Section 56 of the Customs Act during the POI.

In its June 30, 1997, supplemental response, the GOTT provided a breakdown of the number of licenses issued by industry during the first six months of the POI. During the POI, the Ministry of Trade and Industry issued a large number of licenses to a wide cross section of industries. Some of the licenses were new issuances and others were renewals of licenses previously issued. Thus, the recipients of the exemption were not limited to a specific industry or group of industries. The breakdown of licenses by industry also indicated that the steel industry was not a predominant user of the subsidy nor did it receive a disproportionate share of benefits under this program. For these reasons, we preliminarily determine that import duty concessions under Section 56 of the Customs Act are not limited to a specific industry or group of industries, hence, are not countervailable.

B. Point Lisas Industrial Estates Lease

The Point Lisas Industrial Port Development Company ("PLIPDECO") owns and operates Point Lisas Industrial Estate. Prior to 1994, PLIPDECO was 98 percent government-owned. Since then, PLIPDECO's issued share capital has been held 43 percent by the government, 8 percent by Caroni Limited, a wholly-owned government entity, and 49 percent by 2,500 individual and corporate shareholders whose shares are traded on the Trinidad and Tobago Stock Exchange.

ISCOTT, the predecessor company to CIL, entered into a 30-year lease contract for a site at Point Lisas in 1983, retroactive to 1978. The 1983 lease rental was revised in 1988. In 1989, the site was subleased to CIL at the revised rental fee. In 1994, ISCOTT and PLIPDECO signed a novation of the lease whereby ISCOTT's name was replaced on the lease by CIL's. During the POI, CIL paid the 1988 revised rental fee for the site.

Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia*, confer a benefit. In the case of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good or service provided in the country of exportation.

In establishing lease rates for sites in the industrial estate, PLIPDECO uses a standard schedule of lease rates as a starting point for negotiating with prospective tenants. The standard lease rates reflect PLIPDECO's evaluation of the market value of land in the estate. Negotiated rates differ from the standard rates based on various factors, such as the size of the lot, the type of business,

the attractiveness of the tenant, and the date on which the lease rate was signed.

Because the rates are negotiated individually with each tenant, the rate paid by CIL (and other tenants) is specific. Therefore, it is necessary to examine whether PLIPDECO is receiving adequate remuneration for the land it leases to CIL.

The site leased by ISCOTT in 1983 and now occupied by CIL is the largest site in the Point Lisas Industrial Estate with an overall area that is considerably more than double the size of the next largest site. Nevertheless, during the POI, CIL's lease fee per square meter for this site appears to have been in line with the lease fees for other sites. This fact indicates that CIL's lease rate is consistent with prevailing market conditions, at least in the Point Lisas Industrial Estate. A further indication that the rates paid by tenants of the estate, including CIL, provide adequate remuneration is the substantial private participation in PLIPDECO since 1994. On these bases, we preliminarily determine that CIL's lease rates have provided adequate remuneration for its site in the Point Lisas Industrial Estate.

At this time, we have no information regarding whether other industrial estates are in operation in Trinidad and Tobago and, if so, what rates are charged by these estates. For our final determination, we will attempt to obtain any available information on lease rates for other industrial estates that may be located in Trinidad and Tobago.

C. Preferential Natural Gas Prices

NGC is the sole supplier of natural gas to industrial and commercial users in Trinidad and Tobago. NGC provides gas pursuant to individual contracts with each of its customers. Natural gas prices to small consumers are fixed with an annual escalator. Prices to large consumers are negotiated individually based on annual volume, contract duration, payment terms, use made of the gas, any take or pay requirement in the contract, NGC's liability for damages, and whether new pipeline is required. Prices must be approved by NGC's Board of Directors. The GOTT indicates that none of the current members of the board is a government official nor do any government laws or regulations regulate the pricing of natural gas.

The price paid by CIL for natural gas during the POI was established in a January 1, 1989 contract between ISCOTT and NGC, which ISCOTT assigned to CIL on April 28, 1989. Average price data submitted by the GOTT for large industrial users of natural gas indicate that the price paid by CIL during the POI was in line with the average price paid by large industrial users overall.

Based on the same analysis described above regarding the lease at Point Lisas Industrial Estate, we have preliminarily determined that the prices paid by CIL to NGC provide adequate remuneration for the natural gas supplied to CIL. Therefore, we have preliminarily determined that NGC's provision of natural gas to CIL is not a countervailable subsidy under section 771(5) of the Act.

III. Program for Which More Information Is Needed

A. Preferential Electricity Prices

The Trinidad and Tobago Electric Commission ("TTEC"), which is wholly-owned by the GOTT, is the sole supplier of electric power in Trinidad and Tobago. Prior to December 23, 1994, TTEC generated the power, which it sold. But on and after this date, TTEC divested its power generating assets to the Power Generating Company of Trinidad and Tobago Limited ("PowerGen"), which is now the sole producer of power in the country. PowerGen is owned 51 percent by TTEC, 39 percent by Southern Electric International Trinidad Inc., and 10 percent by Amoco Power Resources Corporation.

The rates and tariffs for the sale of electricity are set by the Public Utilities Commission ("PUC"), an independent authority. In setting rates, the PUC takes into account cost of service studies done by TTEC. Rates are comprised of a flat rate based on energy consumption and a flat demand charge. Adjustments are made for fuel costs and movements in exchange rates between the Trinidad and Tobago dollar and the U.S. dollar.

For billing purposes, TTEC classifies electricity consumers into one of the following categories: residential, commercial, industrial, and street lighting. Industrial users are further classified into one of four categories depending on the voltage at which they take power and the size of the load taken. CIL is the sole user in the very large load category taking its power at 132 kV for loads over 25,000 KVA. Other large industrial users take power at 33 kV or 66 kV and at loads from 199 to 25,000 KVA.

In its June 30, 1997, supplementary response, the GOTT supplied a cost of service study incorporating 1996 data. The GOTT recently informed us that the study is only provisional and a final study, with revised figures, will be issued soon. Given the relevancy of this study to our analysis, we are requesting that the GOTT supply us with a copy of the final study when it is becomes available. We will consider the results of this study as well as all other information on the record regarding TTEC's provision of electricity to CIL in making our final determination.

IV. Programs Preliminarily Determined To Be Not Used

A. Export Promotion Allowance

B. Corporate Tax Exemption

V. Program Preliminarily Determined Not To Exist

A. Loan Guarantee From the Trinidad and Tobago Electricity Commission

By 1988, ISCOTT had accumulated TT $19,086,000 in unpaid electricity bills owed to TTEC. To manage this debt, TTEC obtained a loan from the Royal Bank in the amount of TT $19,000,000, which enabled TTEC to more readily carry the receivable due from ISCOTT. By 1991, ISCOTT extinguished its debt to TTEC.

At no time during this period did TTEC provide a guarantee to ISCOTT which enabled ISCOTT to secure a loan to settle the outstanding balance on its account. The financing obtained by TTEC from the Royal Bank benefitted TTEC rather than ISCOTT because it allowed TTEC to have immediate use of funds that otherwise would not have been available to it. On this basis, we preliminarily determine that TTEC did not provide a loan guarantee to ISCOTT for purposes of securing a loan to settle the outstanding balance owed to TTEC. Therefore, we preliminarily determine that this program did not exist.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a subsidy rate for CIL, the one company under investigation. We are also applying CIL's rate to any companies not investigated or any new companies exporting the subject merchandise.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rod from Trinidad and Tobago which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the

merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company Ad Valorem Rate

CIL—16.04 percent
All Others—16.04 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on September 22, 1997, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, eight copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 8, 1997. Eight copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than September 15, 1997. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

If this investigation proceeds normally, we will make our final determination by October 14, 1997.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 28, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20489 Filed 8–1–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–827]

Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Office of AD/CVD Enforcement, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1386, or 482–0165.

Preliminary Determination

The Department preliminarily determines that countervailable subsidies have been provided to Sidbec-Dosco (Ispat) Inc. (*see* "Corporate History") a producer and exporter of steel wire rod from Canada. We have also preliminarily determined that Ivaco, Inc. (Ivaco) and Stelco, Inc. (Stelco) received no countervailable subsidies. For information on the estimated countervailing duty rates, see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (62 FR 13866, March 24, 1997) the following events have occurred:

On April 1, 1997, we issued a questionnaire to the Government of Canada (GOC), the Government of Quebec (GOQ), Sidbec-Dosco (Ispat) Inc. (Sidbec-Dosco (Ispat)), Stelco, Inc. (Stelco) and Ivaco, Inc. (Ivaco). On May 2, 1997, we postponed the preliminary determination in this investigation until July 28, 1997 (62 FR 25172, May 8, 1997). On May 27, we received responses from the GOC, GOQ, Sidbec-Dosco (Ispat), Stelco, and Ivaco. On June 13, 1997, we issued a supplemental questionnaire to respondents. Additionally, on June 13, 1997, we issued a questionnaire to the Government of Ontario (GOO). We received responses on July 2, 1997 from respondents GOC, GOO, Sidbec-Dosco (Ispat), Stelco, and Ivaco. On July 3, 1997, we received the GOQ's response to this questionnaire. On July 10, 1997, we issued a second supplemental questionnaire to the GOC, GOQ, GOO, and Sidbec-Dosco (Ispat). We received responses on July 17, 1997.

On June 6, 1997, petitioners alleged that Sidbec, Inc., the government-owned company which was the parent company to Sidbec-Dosco, Inc., during the period in which the alleged subsidies were granted, received subsidies from the GOC and the GOQ which benefitted the subject merchandise. Petitioners requested that the Department include these new subsidy allegations in its investigation of steel wire rod from Canada.

On July 1, 1997, we initiated an investigation on these additional subsidy allegations and issued questionnaires to Sidbec, Inc., the GOC and GOQ on July 2, 1997. We received responses to this questionnaire on July 16, 1997.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch),inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995, (the "Act").

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of steel wire rod from Canada materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Canada of the subject merchandise (62 FR 23485).

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Corporate History

Sidbec, Inc. was established by the GOQ in 1964. In 1968, Sidbec, Inc. acquired Dominion Steel and Coal Corporation Limited, a steel producer, and later changed the name to Sidbec-Dosco, Inc. The GOQ owned 100 percent of Sidbec, Inc.'s stock, and Sidbec, Inc. owned 100 percent of Sidbec-Dosco Inc.'s stock, until privatization in 1994.

In 1976, Sidbec Inc., British Steel Corporation, and Quebec Cartier Mining Company entered into a joint venture to mine and produce iron ore concentrates and iron oxide pellets. The company they formed was Sidbec-Normines Inc. (Normines), of which Sidbec, Inc. owned 50.1%. These mining activities were shut down in 1984.

Sidbec-Dosco (Ispat) operates steel making facilities in Contrecoeur, Montreal and Longueuil, Quebec. Until 1987, all of the facilities at Longueuil and a good portion of the facilities in Contrecouer were owned by Sidbec, Inc. and leased to Sidbec-Dosco, Inc. In 1987, Sidbec, Inc. reorganized in order to consolidate all steel-related assets under its wholly-owned subsidiary Sidbec-Dosco, Inc. On August 17, 1994, Sidbec-Dosco, Inc. was sold to Beheer-en Beleggingsmaatschappij Brohenco B.V. (Brohenco), which is wholly-owned by Ispat-Mexicana, S.A. de C.V. (Ispat Mexicana), thus becoming Sidbec-Dosco (Ispat). Currently, Sidbec, Inc. continues to be 100% owned by the GOQ.

Because Sidbec, Inc.'s financial statements were consolidated including both its mining and steel manufacturing activities, and because the alleged subsidies under investigation were granted through Sidbec, Inc., we are treating Sidbec, Inc., Sidbec-Dosco, Inc. and Sidbec-Normines as one entity for the purposes of determining benefits to the subject merchandise from alleged subsidies. For purposes of this investigation, we are collectively referring to Sidbec, Inc., Sidbec-Dosco, Inc., and Sidbec-Normines as "Sidbec".

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (the "POI") is the calendar year 1996.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets, in determining the allocation period for nonrecurring subsidies. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226; July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against the allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for the purposes of this preliminary determination, the Department has calculated a company-specific AUL.

Based on information provided by Sidbec, Inc. and Sidbec-Dosco (Ispat) regarding Sidbec's depreciable assets, the Department has preliminarily determined the appropriate allocation period for Sidbec. We are unable to provide the specific AUL for Sidbec due to the proprietary nature of data from Sidbec-Dosco (Ispat). Therefore, for the calculation of Sidbec's AUL, *see, Memorandum to The File: Calculation of AUL Period*, dated July 22, 1997, which is in the public file (public version) in the Central Records Unit, Room B–099 of the Department of Commerce.

Because we have preliminarily determined that Ivaco and Stelco were not the recipients of non-recurring subsidies, we have not calculated an AUL for either company.

Equityworthiness: In analyzing whether a company is equityworthy, the Department considers whether or not that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;

2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;

3. Rates of return on equity in the three years prior to the government equity infusion;

4. Equity investment in the firm by private investors; and

5. Prospects in the world for the product under consideration.

For a more detailed discussion of the Department's equityworthiness methodology, see *General Issues Appendix*, (58 FR at 37239 and 37244).

Petitioners have alleged that Sidbec, Inc. and Sidbec-Dosco, Inc. were unequityworthy for the period 1982 through 1992. Therefore, petitioners allege that any equity infusions received during those years would not have been provided by a reasonable private investor and therefore conferred a countervailable benefit within the meaning of section 771(5)(E)(i) of the Act. In this case, we initiated an investigation of Sidbec-Dosco Inc.'s equityworthiness for the years 1982 through 1988. *See Memorandum from The Team to Joseph A. Spetrini dated March 18, 1997, Re: Initiation of Countervailing Duty Investigation: Steel Wire Rod from Canada (March Initiation Memo)*, which is in the public file in the Central Records Unit, Room B–099 of the Department of Commerce. Additionally, on July 1, 1997, we initiated an investigation of Sidbec's equityworthiness for the period 1982 through 1992. *See Memorandum from The Team to Joseph A. Spetrini dated July 1, 1997, Re: Initiation of Countervailing Duty Investigation: Steel Wire Rod from Canada (July Initiation Memo)*, which is in the public file (public version) in the Central Records Unit, Room B–099 of the Department of Commerce. Because we are treating Sidbec, Inc., Sidbec-Dosco Inc., and Sidbec-Normines as one entity for the purpose of determining benefits to the subject merchandise from alleged subsidies, we have limited our analysis of the equityworthiness of Sidbec to a review of Sidbec, Inc.'s financial data. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from France* (58 FR 37304, July 9, 1993).

Throughout the period 1982 to 1985, Sidbec, Inc. reported substantial losses. Although Sidbec, Inc. reported a profit from 1986 through 1990, the profits were not of such a magnitude to offset the substantial losses suffered from 1982 through 1985. Additionally, Sidbec, Inc. again sustained substantial losses in 1991 and 1992. Return on equity was either negative or not meaningful (due to a negative equity balance) in every year from 1984 through 1988, and in 1991, and 1992. Additionally, for the years 1984 through 1988, 1991, and 1992 Sidbec, Inc. had a negative debt-to-equity ratio, which indicated the company's liabilities exceed the company's assets. Furthermore, Sidbec, Inc.'s debt-to-equity ratio in 1989 and 1990 was significantly high. Therefore, as a result of our analysis, we preliminarily determine Sidbec, Inc. to be unequityworthy from 1982 to 1992.

Equity Methodology: In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists, *i.e.*, the price of publicly traded shares of the company's stock or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *General Issues Appendix*. Following this methodology, equity infusions made into an unequityworthy firm are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts;

2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworhiness criteria, *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304, (July 9, 1993) and *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

Petitioners have alleged that Sidbec, Inc. and Sidbec-Dosco, Inc. were uncreditworthy from 1977 through 1993. In this case, we initiated an investigation of Sidbec-Dosco, Inc.'s creditworthiness for the years 1982 and 1984 through 1988. *March Initiation Memo*. Additionally, on July 1, 1997, we initiated an investigation of Sidbec's creditworthiness for the period 1984 through 1993. *July Initiation Memo*. We have limited our analysis to Sidbec, Inc."s creditworthiness and to the period 1980–1992, because petitioners did not allege that Sidbec, Inc. or Sidbec-Dosco received any subsidies beyond 1992. To determine the creditworthiness of Sidbec, Inc. during the period 1982 (the year of the first alleged subsidy in the AUL period) through 1992 (the year of the last alleged subsidy in the AUL period), we have evaluated certain liquidity and debt ratios, *i.e.*, quick, current, times interest earned, and debt-to-equity, on a consolidated basis. For the period 1982 through 1985, the company consistently incurred substantial losses. Despite the fact that Sidbec, Inc. reported a profit from 1986 through 1990, the company was still thinly capitalized and had a high debt-to-equity ratio. Additionally, the interest coverage ratio was negative for the years 1991 and 1992 and the liquidity ratios (*i.e.*, quick and current ratio) indicated that the company may have had difficulty in meeting its short-term obligations. Based on our analysis, we preliminarily determine that Sidbec, Inc. was uncreditworthy for the years 1982 through 1992.

Discount Rates: Respondents did not provide company-specific information relevant to the appropriate discount rates to be used in calculating the countervailable benefit for non-recurring grants and equity infusions in this investigation. For the preliminary determination, we were unable to find long-term corporate rates (*i.e.*, loans or bonds). Currently, we are still seeking information on long-term rates, and, if we find this information, we will consider it in our final determination. Accordingly, we have used the long-term government bond rate in Canada published in the *International Monetary Fund (IMF) International Financial Statistics Yearbook* as the discount rate, plus a risk premium (because we have preliminarily determined Sidbec to be

uncreditworthy), for each year in which there was a non-recurring countervailable subsidy.

Privatization Methodology: In the *General Issues Appendix,* we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a company (privatization).

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during a period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI (*i.e.,* a period equal to the company-specific allocation period) and ending one year prior to the privatization. We then take the simple average of the ratio of allocable subsidies received by the company in each year over the company's net worth in that year. The simple average of the ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value (*i.e.,* net worth of the company). Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

In the current investigation, we are analyzing the privatization of Sidbec-Dosco in the year 1994.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. 1988 Debt-to-Equity Conversion

Petitioners allege that Sidbec-Dosco, Inc. received a debt-to-equity conversion from either the GOC or the GOQ in 1988 based on Sidbec-Dosco, Inc.'s 1988 Annual Report. In its supplemental response, Sidbec-Dosco (Ispat) stated that a portion of Sidbec Inc.'s debt was converted into Sidbec, Inc. capital stock in 1988. Sidbec-Dosco (Ispat) stated that the debt consisted of four loans provided to Sidbec, Inc. by the GOQ during the period 1982–1985, plus accrued interest. Sidbec-Dosco (Ispat) explained that every two years the GOQ had extended the maturity date for these loans for another two years. According to the GOQ, it converted four of Sidbec, Inc.'s debt instruments into equity in Sidbec Inc. in 1988 in order to improve Sidbec-Dosco Inc.'s economic profile, for the purpose of making it more attractive for privatization, partnership, or investment. In the GOQ Act which authorized this debt conversion, Sidbec, Inc. was authorized to acquire an equivalent amount in shares of Sidbec-Dosco, Inc.

We have concluded that, consistent with our equity methodology, benefits to Sidbec, Inc. occurred at the point when the debt instruments (*i.e.,* loans) were converted to capital stock. As discussed above, we have preliminarily determined that Sidbec, Inc. was unequityworthy from 1982 through 1992. As a result, we consider the conversion of debt to capital stock in 1988 to constitute an equity infusion inconsistent with the usual investment practice of private investors.

When receipt of benefits under a program is not contingent upon exportation, the Department must determine whether the program is specific to an enterprise or industry, or group of enterprises or industries. Under the specificity analysis, the Department examines both whether a government program is limited by law to a specific enterprise or industry, or group thereof (*i.e., de jure* specificity), and whether the government program is in fact limited to a specific enterprise or industry, or group thereof (*i.e., de facto* specificity), See Section 771(5A)(D) of the Act. We preliminarily determine the 1988 debt-to-equity conversion to be specific, because it was provided to a specific enterprise or industry, Sidbec, Inc.

For these reasons, we preliminarily determine that the 1988 debt-to-equity conversion constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

Consistent with the equity methodology, we followed our standard declining balance grant methodology for allocating the benefits from the equity infusion stemming from the debt-to-equity conversion. We then reduced the benefit stream by applying the privatization calculation described in the Privatization section of the *General Issue Appendix,* 58 FR at 37262–3. We divided the benefit by Sidbec-Dosco (Ispat) total sales. On this basis, we calculated an estimated net subsidy for this program of 3.31 percent *ad valorem* for Sidbec-Dosco (Ispat).

B. 1984–1992 Equity Infusions

According to information provided in Sidbec-Dosco (Ispat)'s response, the GOQ provided an infusion of capital to Sidbec Inc. in each year from 1984 to 1992. Additionally, the GOQ stated that it assumed the responsibility for certain financial charges of Sidbec-Normines, which had been shut down in 1984, and paid those charges through contributions to Sidbec, Inc. as they came due. Since we have preliminarily determined that Sidbec Inc. was unequityworthy from 1982 through 1992, we consider that these equity infusions were inconsistent with the usual investment practice of private investors and constituted specific financial contributions in which a benefit was conferred.

Furthermore, the Department has stated in the past that "subsidies do not diminish or disappear upon the closure of certain facilities but rather are spread throughout, and benefit, the remainder of the company's operations." *General Issues Appendix,* 58 FR at 37269. Therefore, given that these equity infusions relate to Sidbec Inc.'s closed mining operations, we preliminarily determine that these equity infusions benefit the subject merchandise.

We analyzed whether the receipt of these equity infusions were specific "in law or fact" within the meaning of section 771(5A) of the Act. We preliminarily determine these equity infusions to be specific, because they were provided to a specific enterprise or industry, Sidbec, Inc.

For these reasons, we preliminarily determine that the equity infusions received by Sidbec from 1984 to 1992 constitutes countervailable subsidies within the meaning of section 771(5) of the Act.

Consistent with the equity methodology, we followed our standard declining balance grant methodology for allocating the benefits from these equity infusions. We then reduced the benefit stream by applying the privatization calculation described in the Privatization section of the *General Issues Appendix,* 58 FR at 37262–3. We divided the total benefit by Sidbec-Dosco (Ispat) total sales. On this basis, we calculated an estimated net subsidy for this program of 5.25 percent *ad valorem* for Sidbec-Dosco (Ispat).

C. 1983–1992 Grants

Based on information provided in Sidbec-Dosco (Ispat)'s responses, Sidbec Inc. received a grant in each year from 1983 to 1992 from the GOQ to compensate for the interest expenses incurred by Sidbec, Inc. to finance the discontinued operations of its mining activities. The receipt of these grants occurred as follows: (1) Sidbec, Inc. paid its share of the interest and principal, as it came due, on loans that were taken out to finance Sidbec-Normines; (2) Sidbec, Inc. then issued statements to the GOQ for these

amounts relating to the discontinued mining operations; and (3) the GOQ, after obtaining the necessary budgetary authority, issued checks to Sidbec, Inc. to cover these expenses. According to the GOQ, to process a request for these funds, approval was needed from four agencies (*i.e.*, the Quebec Ministry of Industry and Commerce, the Treasury Board, the National Assembly and the Executive Counsel). Once the approval process was completed, the GOQ issued a decree providing funding to Sidbec, Inc. (or its subsidiaries). *See* July 3, 1997 GOQ response, Exhibit H.

As these grants related to Sidbec Inc.'s closed mining operations, we preliminarily determine that they benefitted Sidbec Inc.'s remaining operations, which include the subject merchandise. *See General Issues Appendix*, 58 FR at 37269.

We analyzed whether the receipt of these grants was specific "in law or fact," within the meaning of section 771(5A) of the Act. These grants were not received as part of any wider government program. Instead, they were provided by the GOQ for the sole purpose of paying debt incurred by Sidbec-Normines, Sidbec, Inc.'s unsuccessful mining operation. Therefore, we preliminarily determine these grants to be specific under section 771(5A)(D) of the Act.

For these reasons, we preliminarily determine that the grants Sidbec, Inc. received constitute countervailable subsidies within the meaning of section 771(5) of the Act.

The GOQ has claimed these benefits were recurring in nature, in that they were granted automatically based on Quebec's having previously assumed responsibility for the finance charges pertaining to the discontinued mining operations. However, for each year's grant to cover the finance charges, the GOQ had to seek budgetary authority prior to issuing Sidbec's grant. Therefore, government approval was necessary prior to receipt of each individual subsidy. Moreover, the benefits from the program were clearly exceptional, and once the financial charges were paid off, the program did not continue into the future. The Department has stated that "the element of "government approval" relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic." *General Issues Appendix*, 58 FR at 37226. Therefore, we preliminarily determine these grants to be non-recurring benefits and have allocated them over Sidbec's AUL.

To calculate the countervailable subsidy, we followed our standard declining balance grant methodology, as discussed above. We reduced the benefit stream by applying the privatization calculation described in the Privatization section of the *General Issues Appendix*, 58 FR at 37262–3. We divided the benefit attributable to the POI by Sidbec-Dosco (Ispat) sales during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.99 percent *ad valorem* for Sidbec-Dosco (Ispat).

II. Programs Preliminarily Determined To Be Not Countervailable

A. Canadian Steel Trade Employment Congress Skill Training Program

The GOC, through the Human Resources Development Canada (HRDC) and provincial regional governments provide financial support to private-sector-led human resource projects through the Sectoral Partnerships Initiative (SPI). SPI has been active in over eighty Canadian industrial sectors, including steel through the Canada Steel Trade and Employment Congress (CSTEC). CSTEC's activities are divided into two types of assistance: 1) worker adjustment assistance, for unemployed steel workers; and 2) skills training assistance, for currently employed workers.

With regard to the worker adjustment assistance, funds flowing from HRDC do not go to the companies, but rather to unemployed workers in the form of assistance for retraining costs or income support.

With regard to training, the GOC maintains that CSTEC provides funds only for what it describes as "additional training." Additional training is training that is over-and-above "established training'; essentially, it is training the company would provide even without CSTEC funding. The amount of "additional training" required determines the amount of CSTEC funding from the government. The GOC matches 50 percent of the amount of "additional training" in the annual training plans and budgets up to the maximum allowable contribution. However, other information in the GOC's questionnaire response suggests that the GOC funding supports both "established training" and "additional training"; the cost of the "additional training" is merely an element in the formula which determines the GOC's funding level. In addition, regardless of whether the company would have provided the training at issue without CSTEC funding, it remains clear that this program provides for the training of currently employed steel workers and therefore benefits the steel industry.

According to the GOC and CSTEC documents on the record, CSTEC rules prohibit the use of CSTEC funds for assistance that the companies are required to provide by law or under a collective bargaining agreement, or would have provided in the absence of CSTEC funding. Based on the record information, we preliminarily determine that funds received by Sidbec-Dosco (Ispat), Stelco and Ivaco from CSTEC for worker adjustment and training purposes did not provide countervailable benefits during the POI, as record evidence shows these companies were not relieved of any obligations.

B. 1987 Grant to Sidbec-Dosco, Inc.

Petitioners alleged that in 1987, Sidbec-Dosco, Inc. received a grant from the GOQ. In its questionnaire response, Sidbec-Dosco (Ispat) stated that the GOQ did not provide a contribution in 1987. Additionally, the GOQ stated in its questionnaire response that it did not provide a grant July 24, 1997 to Sidbec-Dosco, Inc. in 1987.

Sidbec-Dosco (Ispat) described the circumstances concerning the 1987 debt-to-equity conversion in its business proprietary response of July 2, 1997. Based on the information provided therein, (*see*, the Department's *Memorandum to The File: Programs that the Department of Commerce has Determined to be Non-Countervailable*, dated July 28, 1997 which is in the public file (public version) in the Central Records Unit, Room B–099 of the Department of Commerce), we preliminarily determine that no countervailable benefits were conferred through this program.

C. 1987 Debt-to-Equity Conversion

Petitioners alleged that, in 1987, Sidbec-Dosco, Inc. received an equity infusion from either the GOC or GOQ. Specifically, petitioners stated that Sidbec, Inc. (which was wholly-owned by the GOQ) converted loans to Sidbec-Dosco, Inc. into Sidbec-Dosco, Inc. shares. Both the GOC and the GOQ stated in their respective responses that they did not provide a debt-to-equity conversion for Sidbec-Dosco, Inc. or Sidbec, Inc. in 1987.

Sidbec-Dosco (Ispat) described the circumstances concerning the 1987 debt-to-equity conversion in its business proprietary response of July 2, 1997. Based on the information provided therein, (*see*, the Department's

Memorandum to The File: Programs that the Department of Commerce has Determined to be Non-Countervailable, dated July 28, 1997 which is in the public file (public version) in the Central Records Unit, Room B–099 of the Department of Commerce), we preliminarily determine that no countervailable benefits were conferred through this program.

III. Programs Preliminarily Determined To Be Not Used

A. Industrial Development of Quebec

The Industrial Development of Quebec (IDQ) is a law administered by the Societe de Developpement Industriel du Quebec (SDI), a Quebec agency that funds a wide range of industrial development projects in many industrial sectors. Under Article 2(a) of the IDQ, SDI provided funding to help companies utilize modern technologies in order to "increase efficiency and exploit the natural resources of Quebec." See GOQ July 3, 1997 response at page 12. Specifically, grants are in the form of interest rebates to finance the project. SDI would review a company's application to determine whether the project met the purpose of Article 2(a) and whether the company had the financial and technical ability to carry out the project. The GOQ reported that the IDQ was available to any manufacturing company in Quebec. The criteria for selection were: (1) the rate of growth in the product market that the proposed project would serve; (2) the productivity of the firm applying for the grant; and (3) the potential for the project to serve markets outside of Quebec. However, in 1982, GOQ rescinded Article 2(a) authorizing SDI to provide these grants.

Ivaco received funding in 1984 and 1985 which had been authorized under Article 2(a) prior to the program's rescission in 1982. With respect to the grants received by Ivaco under this program, we analyzed the total amount of funding Ivaco received in each year, and we have determined that the benefits Ivaco recovered under this program for each year constituted a de minimis portion (i.e., less than 0.5 percent) of total sales value, and therefore should be expensed in each year they were received. Accordingly, we preliminarily determine that this program has not conferred a countervailable subsidy to Ivaco during the POI.

B. Contributed Surplus

On July 1, 1997, we initiated an investigation on petitioners' allegation that C$ 51.7 million in contributed surplus constituted a countervailable subsidy. On July 16, 1997, we received Sidbec-Dosco (Ispat)'s response to our questionnaire. Sidbec-Dosco (Ispat) stated that this contributed surplus was related to a capital expenditure program for fixed assets, and all of the assistance was received prior to 1980. Additionally, the GOQ stated in its response that Sidbec, Inc. received these funds from the GOQ and the GOC prior to Sidbec, Inc.'s AUL period. The GOC stated in its response that its database does not contain any record of financial assistance provided to Sidbec, Inc. in 1982 or 1983.

Therefore, based on record information about this alleged subsidy, we preliminarily determine that these funds did not provide countervailable benefits during the POI.

C. Payments Against Accumulated Grants Receivable

On July 1, 1997, we initiated an investigation on petitioners' allegation that C$ 43.8 million in Payments against accumulated grants receivable constituted a countervailable subsidy. On July 16, 1997, we received Sidbec-Dosco (Ispat)'s response to our questionnaire. Sidbec-Dosco (Ispat) stated that these grants receivable are included in the amount of grants that went to the discontinued mining operations of Sidbec-Normines.

Therefore, based on record information about these grants receivable, we preliminarily determine that these funds did not provide countervailable benefits during the POI.

IV. Programs for Which Additional Information Is Required

A. 1992 Assistance to Sidbec-Dosco, Inc.

Petitioners alleged that in 1982, Sidbec-Dosco, Inc. received an infusion of emergency funds, either in the form of a grant or an equity infusion, from the GOQ. In its questionnaire and supplemental questionnaire responses, Sidbec-Dosco (Ispat) stated that neither Sidbec-Dosco, Inc. nor Sidbec, Inc. received funds in the form of equity infusions from either the GOC or the GOQ during 1982. Likewise, both the GOC and the GOQ stated in their respective responses that they did not provide any infusions in the form of equity to either Sidbec-Dosco, Inc. or Sidbec, Inc. in 1982. However, during our review of the questionnaire responses, the GOC, GOQ, Sidbec, Inc. and Sidbec-Dosco (Ispat) did not provide an affirmative statement stating the neither the GOC or GOQ provided grants to either Sidbec, Inc. or Sidbec-Dosco, Inc. in 1982. Therefore, we are still seeking information on this alleged program and the countervailability of this program will be addressed in our final determination.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation. As noted above, Ivaco and Stelco reported that they both received funds under the CSTEC program. However, we have preliminarily determined that the CSTEC program is not countervailable. Additionally, we have determined that the IDQ program did not constitutes a countervailable subsidy, because the benefit would be *de minimis.*

To calculate the all others rate, we weight-averaged the individual company rates by each company's exports of the subject merchandise to the United States. However, because Stelco and Ivaco's rates are zero, we are using Sidbec-Dosco (Ispat)'s rate as the All Others rate.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rod from Canada, except those of Ivaco and Stelco, which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. Because the estimated net subsidy for Ivaco and Stelco is *de minimis* they are exempt from the suspension of liquidation. This suspension will remain in effect until further notice.

Manufacturers/exporters	Ad valorem rate (percent)
Sidbec-Dosco (Ispat)	9.55
Ivaco, Inc.	0
Stelco, Inc.	0
All Others	9.55

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC

access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on September 22, 1997, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, eight copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 8, 1997. Eight copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than September 15, 1997. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. If this investigation proceeds normally, we will make our final determination by October 14, 1997.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Date: July 28, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20490 Filed 8–1–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–307–814]

Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, Robert Copyak, or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Preliminary Determination

The Department preliminarily determines that countervailable subsidies are being provided to CVG-Siderurgica del Orinoco (SIDOR), a producer and exporter of steel wire rod from Venezuela. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (62 FR 13866, March 24, 1997), the following events have occurred. On April 2, 1997, we issued our initial countervailing duty questionnaires concerning petitioners' allegations to the Government of Venezuela (GOV) and SIDOR. On May 2, 1997, we postponed the preliminary determination of this investigation until July 28, 1997 (62 FR 25172, May 8, 1997). We received responses to our initial questionnaires from the GOV and SIDOR on May 28, 1997. On June 18, 1997, we issued supplemental questionnaires to the parties. Responses to these supplemental questionnaires were submitted on July 3, 1997, from SIDOR and on July 9, 1997, from the GOV. Additional information was also requested from SIDOR and the GOV on July 15, 1997. On July 21, 1997, SIDOR and the GOV submitted their response to our July 15, 1997, request for additional information. On July 25, 1997, we issued another supplemental questionnaire to SIDOR and the GOV.

On June 17, 1997, we initiated an examination of whether electricity was provided to SIDOR for less than adequate remuneration during the period of investigation. *See* Memorandum from The Team to Jeffrey P. Bialos, dated June 17, 1997, Re: Countervailing Duty Investigation of Steel Wire Rod from Venezuela: Initiation of New Subsidy Allegation, which is in the public file of the Central Records Unit, Room B–099 of the Department of Commerce. Because of the late date of this initiation, we are still seeking additional information on whether this program conferred a countervailable subsidy on the production/exportation of the subject merchandise. Therefore, the countervailability of this program will be addressed in our final determination. In addition, during our review of the questionnaire responses, we discovered that SIDOR may be receiving countervailable subsidies under the GOV's Exporter Policy program (REFE). However, additional information is still being sought on this program. Accordingly, the countervailability of the REFE will be addressed in our final determination.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater

than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Venezuela is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of steel wire rod from Venezuela materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination, finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Venezuela of the subject merchandise (62 FR 23485).

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Subsidies Valuation Information

Period of Investigation

The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for nonrecurring subsidies. *See General Issues Appendix* (*GIA*), appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel*. Therefore, for the purposes of this preliminary determination, the Department has calculated a company-specific AUL. Based on information provided by SIDOR regarding the company's depreciable assets, the Department has preliminarily determined that the appropriate allocation period for SIDOR is 20 years.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether or not that company could have attracted investment capital from a reasonable, private investor in the year of the government equity infusion based on information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time.

In making an equityworthiness determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the government equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, *see* the *GIA*, 58 FR at 37244.

In this case, we initiated an investigation of SIDOR's equityworthiness for the years 1977 through 1990 and for the year 1992. See Memorandum from The Team to Jeffrey P. Bialos, dated March 18, 1997, Re: Initiation of Countervailing Duty Investigation: Steel Wire Rod from Venezuela (*Initiation Memo*), which is in the public file of the Central Records Unit, Room B–099 of the Department of Commerce. In past investigations, the Department preliminarily determined that SIDOR was equityworthy in 1977, and unequityworthy for the years 1978 through 1984. *See Preliminary Affirmative Countervailing Duty Determination; Certain Steel Products From Venezuela*, 50 FR 11230 (March 20, 1985) (*Steel Products from Venezuela*); and *Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From Venezuela*, 50 FR 28234 (July 11, 1985) (*1985 Wire Rod from Venezuela*). Moreover, the Department initiated an investigation of SIDOR's equityworthiness for the period 1985 through 1990. *See* the *Initiation Memo* and *Final Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Pipe from Venezuela*, 57 FR 42964 (September 17, 1992) (*Non-Alloy Pipe from Venezuela*). The petitioners alleged that SIDOR was unequityworthy in 1977 and provided an analysis of the company's financial information for the two years prior to 1977. Based on this information and the fact that the 1977 equityworthy decision was a preliminary finding, we initiated an investigation of SIDOR's equityworthiness in 1977. *See* Memorandum To Barbara E. Tillman, dated March 18, 1997, Re: Initiation of Creditworthy/Equityworthy Allegation (*Creditworthy/Equityworthy Memo*), which is in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.

Based on our initiation, we requested financial ratios from SIDOR for the relevant years for each of the equity infusions. However, in its questionnaire response SIDOR provided financial ratios only for 1989 through 1992, stating that it could not access the data that would lead to a reversal of the unequityworthy finding for years prior to 1990. Because SIDOR has not provided any information in this investigation that calls into question the Department's prior determinations that the company was unequityworthy for the years 1978 through 1990, we

preliminarily determine that the GOV equity investments made in those years were inconsistent with the usual investment practice of private investors. With respect to the 1977 equity infusions, neither party has provided any information beyond what the Department examined in the prior proceeding in which we found the company to be equityworthy for that year. Therefore, because no new information has been submitted in this proceeding to indicate that our prior preliminary decision was incorrect, we find that it is appropriate to follow that earlier determination, and preliminarily determine SIDOR to be equityworthy in 1977.

With respect to the 1992 debt to equity conversion on which we initiated, the agreement between SIDOR and the GOV for this transaction was signed on May 18, 1993, with the debt conversion being made retroactive to October 28, 1992. However, in the questionnaire responses, the GOV stated that the decision to convert 60 percent of SIDOR's debt into equity was made in October 1991. Therefore, we consider 1991 to be the relevant year for purposes of determining whether the conversion of debt to equity was consistent with the usual investment practices of private investors. Respondents claim that this conversion of SIDOR's debt for equity by the Ministry of Finance (Hacienda) was consistent with the usual investment practices of private investors. SIDOR and the GOV indicate that the company's financial situation was significantly improved by that time, the result of a major restructuring process begun in 1989 aimed at improving profitability and international competitiveness. Prior to 1992, SIDOR had reduced the number and variety of products it produced by 10 percent, made new investments in technology, lowered per unit costs by 20 percent in constant terms, decreased personnel by 20 percent, and steadily increased capacity utilization. SIDOR claims that these pre-1992 improvements formed the basis for the GOV's decision in 1991 to convert 60 percent of SIDOR's debt into equity. According to the GOV, this transaction was expected to complete the turnaround of the company by substantially increasing its cash flow and profits necessary to support the investment required for SIDOR's continued improvement.

Our analysis of SIDOR's financial information during the three years prior to 1991 indicates that there was no consistent trend during that period. SIDOR showed small profits in 1988 and 1989, against a small loss in 1990. While SIDOR's return on equity also turned negative in 1990, the company experienced a positive return on equity in 1988 and 1989. Moreover, in each of these years, the operating margin of profit was positive. Therefore, in light of the steps taken by SIDOR to enhance its competitiveness, and because the company experienced a positive return on equity for 1988 and 1989, we preliminarily determine that SIDOR was equityworthy in 1991. In reaching this determination, we recognize that there are significant issues which we must continue to examine. Among these are the effects of inflation on a company's financial picture, as well as the factors affecting a reasonable investor's decision to invest in the company during these years. Additional factors that may affect potential investors include liquidity issues and the ability of the company to service its long-term debt, especially in light of SIDOR's debt problems over these years. We will continue to address these issues and collect additional information during the course of this proceeding.

In our review of SIDOR's questionnaire response, we found that in 1993 and 1994, CVG transferred land to SIDOR to cancel unpaid capital subscriptions. Therefore, we analyzed SIDOR's financial performance for the years 1990 through 1993 to determine whether SIDOR was equityworthy in the years 1993 and 1994. As stated above, SIDOR experienced losses in 1990. However, SIDOR's financial performance showed signs of improvement after 1990—in 1991 and 1992 the company returned to profitability, and the company's negative equity in 1990 turned positive in 1991 and in 1992. Moreover, the company's cash flow to debt also improved in these years, as did the company's current and quick ratios. In light of SIDOR's generally positive financial performance over the 1990 through 1993 period, we preliminarily determine that SIDOR was equityworthy in 1993 and 1994.

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists, i.e., the price of publicly traded shares of the company's stock or an infusion by a private investor at the time of the government's infusion (the latter may not always constitute a proper benchmark based on the specific circumstances in a particular case).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the GIA, 58 FR at 37239. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Using the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993); and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

Petitioners have alleged that SIDOR was uncreditworthy in each of the years the company received GOV equity infusions, *i.e.*, 1977 through 1992 (with the exception of 1988). In *Non-Alloy Pipe from Venezuela*, the Department initiated an examination of SIDOR's creditworthiness for the years 1985 through 1990. For all other years, the Department initiated an examination of SIDOR's creditworthiness based upon an analysis of SIDOR's cash flow and financial ratios. *See* 57 FR at 42964, and the *Creditworthy/Equityworthy Memo.*

As outlined above under the "Equityworthiness" section, for all the years except 1989 through 1992, SIDOR did not submit financial data beyond what was examined in the initiation stage, stating that such information was inaccessible. Therefore, because SIDOR has not provided any information that rebuts the Department's initiation analysis, we preliminarily determine that SIDOR was uncreditworthy in each of the years for which we have preliminarily determined SIDOR to be unequityworthy, *i.e.*, 1978 through 1990.

Discount Rates

For uncreditworthy companies, our practice is to use as the discount rate the highest long-term fixed interest rate commonly available to firms in the country plus an amount equal to 12 percent of the prime rate. *See Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy*, 59 FR 18357, 18358 (April 18, 1994). (*GOES*). SIDOR did not provide company-specific long-term debt information because the company has not received any long-term loans in domestic currency since 1977. However, in the countervailing duty investigation of carbon steel products from Venezuela, the Department used, for benchmark purposes, data on long-term domestic corporate bond yields, published in Morgan Guaranty Trust Company's *World Financial Markets*. *See Preliminary Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Venezuela*, 54 FR 11227, 11229 (March 20, 1985). This data is available through 1987 and represents the highest long-term fixed interest rate for bolivar financing we were able to locate. For the period after 1987, the GOV explained that the primary mechanism for obtaining long-term domestic currency financing in Venezuela has been through short-term loans. Such a loan would continually be rolled-over with a new short-term interest rate applied each year, thus becoming, in effect, a long-term variable rate loan. We were unable to locate any information on long-term fixed interest rates in bolivars for these years. Therefore, to calculate the benefit from non-recurring countervailable subsidies received by SIDOR through 1987, we have used the long-term corporate bond rates in Venezuela as the discount rate, published by Morgan Guaranty Trust Company in *World Financial Markets*. This conforms with our practice followed in *GOES*, 59 FR at 18358. For the years 1988 through 1990, we have used as the discount rate the average short-term interest rate, provided by the GOV in the questionnaire response and based on data from the leading commercial banks in Venezuela.

Because we preliminarily determine SIDOR to be uncreditworthy for the years 1978 through 1990, we added to the discount rates a risk premium of 12 percent. Moreover, we have adjusted the discount rate to take into account inflation because Venezuela has experienced intermittent periods of high inflation over the past twenty years, and because SIDOR has adjusted its financial statements to take into account the effects of inflation since 1993. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 61 FR 53351 (October 11, 1996) (*IPA from Israel*).

Based upon our analysis of the petition and the responses to our questionnaires, we preliminary determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. GOV Equity Infusions into SIDOR

SIDOR received GOV equity infusions in every year from 1977 through 1991, except 1988. SIDOR is a 100-percent government-owned company. Its parent company is Corporacion Venezolana de Guayana (CVG), a holding company owned by the GOV charged with promoting industrial development in the Guayana Region. The majority of the equity infusions were made by the Fondo de Inversiones de Venezuela (FIV), a Venezuelan investment fund. The remaining funds were provided by the Ministry of Finance (Hacienda), primarily as interest payments on loans. According to the response of the GOV, the government equity infusions into SIDOR were provided pursuant to specific laws adopted with respect to government-approved expansion projects of SIDOR. Thus, these equity infusions were specific under section 771(5A)(D) of the Act.

Equity funds disbursed to SIDOR by the FIV were made pursuant to special laws passed by the Venezuelan Congress and were not part of any government program. The first law, published in the Gaceta Oficial No. 30,587 on January 2, 1975, authorized SIDOR's 1974–79 "Plan IV" expansion. This expansion was aimed at increasing SIDOR's steel production by 3.6 million tons as well as increasing the company's rolling capacity for flat and non-flat products. The government equity infusions under Plan IV were not disbursed in the amounts or at the time originally projected in this plan. However, the amounts received by SIDOR were recorded in the company's annual financial statements in the year they were received. Equity funds also were provided to SIDOR in accordance with a 1987 law passed by the Venezuelan Congress. This law was published in the Gaceta Oficial No. 33,771 on December 21, 1987. The FIV received both preferred and common shares for these equity investments into SIDOR.

As noted above, funds were also provided to SIDOR by the Hacienda. Funds provided by the Hacienda between 1977 and 1981 were authorized under Article 11 of a 1976 Special Law for Public Credit and were also made pursuant to a June 26, 1977, agreement between the Hacienda, FIV, CVG and SIDOR. Under this agreement, the Hacienda agreed to pay SIDOR's interest on loans from the FIV in return for shares in the company. Equity payments made between 1984 and 1986 were provided pursuant to government Decree 390 of December 1984, authorizing the Haicenda to help SIDOR service its foreign debt. Finally, a 1987 loan from the Hacienda to SIDOR was converted into equity, but recorded as an advance for future capital increase.

SIDOR records all Hacienda equity funds in the years the funds were received. However, the capital investments appeared in SIDOR's annual financial statements as "Advances for Future Capital Increase." In 1989, all advances were converted into shares issued to Hacienda, the delay stemming from a disagreement between the Hacienda and CVG as to who should take ownership of the shares. The issue was resolved in 1989, and on the same day the shares were issued to Hacienda, they were transferred to CVG, SIDOR's parent company. We have treated these Hacienda funds as capital investments in each year in which they were received by SIDOR. According to the agreement under which the Hacienda funds were provided, the funds are to be treated as capital infusions.

In 1991, following several years of restructuring by SIDOR, the GOV agreed to convert 60 percent of SIDOR's debt and the interest accrued on the debt into equity which was converted into shares provided to Hacienda. This debt related to SIDOR's pre-1986 foreign currency loans that had been restructured in accordance with government Decree 1261 of November 15, 1990. As a result of this conversion, the Hacienda now holds 39.68 percent of SIDOR's shares. As of December 31, 1996, the remaining 60.32 percent were held by SIDOR's parent company, CVG.

In 1993 and 1994, also in connection with SIDOR's Plan IV expansion project, CVG transferred some of the land on which the company constructed the Plan IV expansion. The land was used as payment for unpaid capital subscriptions from CVG. At the time, CVG purchased only about half of the 1,860,000 shares in SIDOR it had subscribed to. We consider the land transfers to be capital investments in each year in which they were received by SIDOR.

We have preliminarily determined that the equity infusions into SIDOR in the years 1978 through 1990 constitute countervailable subsidies in accordance with section 771(5)(E)(i) of the Act because the GOV investments were not consistent with the usual investment practice of private investors. We have also preliminarily determined SIDOR to be equityworthy in 1991, 1993 and 1994, and therefore are not calculating any benefit from the infusions made in these years. *See* the discussion on "Equityworthiness" above. As explained in the "Subsidies Valuation Information" section, we have treated equity infusions in unequityworthy companies as grants given in the year the capital was received. We have further determined these infusions to be non-recurring subsidies. Therefore, for the reasons outlined in the "Subsidies Valuation Information" section above, we have allocated the benefits over 20 years.

Because Venezuela experienced periods of high inflation during the period 1978 through 1996 (the rates ranged from 7 percent to 103 percent, with an average rate of 34 percent), we must take into account the effects of inflation to accurately value the benefit from GOV equity infusions. *See, e.g., IPA from Israel* 51 FR 53351, and *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Mexico*, 58 FR 37352, 37355 (July 9, 1993). Therefore, we consider that it is appropriate to adjust the principal and interest amount in each year for inflation. This approach is also supported by the fact that Venezuelan companies over the past several years have been adjusting their financial statements to reflect inflation (including asset and equity accounts). This methodology is discussed in the "Calculation Memorandum to the File," dated July 28, 1997 (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Information on the discount rates we are using to calculate the benefit from these equity infusions is discussed in the "Discount Rates" section above.

To calculate the total benefit from the infusions to SIDOR, we summed the benefit allocated to the POI from each equity infusion. We then divided that total benefit by SIDOR's total sales of all products during the POI. On this basis, we preliminarily determine the net subsidy for this program to be 10.72 percent *ad valorem* for SIDOR.

B. Dividend Advances from the Hacienda

Between 1977 and 1981, pursuant to a June 26, 1977 agreement among the Hacienda, FIV, CVG and SIDOR, the Hacienda paid dividends on behalf of SIDOR on the preferred shares held by FIV. These were recorded in SIDOR's accounting records as "Dividend Advances." These dividend advances are still reported in SIDOR's 1996 financial statement. According to the 1996 financial statement, the final treatment of these dividend advances has not been decided. Because the payment by the Hacienda of dividends on behalf of SIDOR is based on an agreement signed among the Hacienda, FIV, CVG and SIDOR, the payment of dividends by the Hacienda, a Government agency, is limited to one company, SIDOR, and is, thus, specific under section 771(5A)(D) of the Act. To determine whether a benefit has been provided, the Department must determine whether SIDOR was obligated to pay dividends to FIV on the preferred shares. If the Hacienda relieved SIDOR of a payment obligation, then the payment of dividends by the Hacienda on behalf of SIDOR constitutes a countervailable subsidy.

According to its supplemental questionnaire response, SIDOR had fiscal losses in the years the dividend payments were made. Therefore, SIDOR stated that it was not obligated to pay any dividends. To determine whether SIDOR was obligated to pay the dividends to FIV on the preferred shares, we also reviewed the 1977 agreement among the Hacienda, FIV, CVG and SIDOR. According to this agreement, the preferred shares yielded a fixed yearly dividend equivalent to seven percent of their nominal value and, therefore, SIDOR was obligated to pay fixed yearly dividends to FIV. Because the payment of dividends by the Hacienda to FIV relieved SIDOR of a financial obligation, we preliminarily determine that the outstanding balance of the "Dividend Advances" provides a countervailable subsidy to SIDOR.

In order to calculate the benefit from this program, we have preliminarily determined to treat the dividend advances as interest-free short-term loans because the advances appear to be liabilities of SIDOR. The 1977 agreement, under which these dividends were paid, does not state that these are capital infusions into SIDOR by the Hacienda. In addition, neither the GOV or SIDOR have treated these dividend advances as capital infusions. Thus, it appears, that SIDOR is still liable for repayment of the dividend advances.

To calculate the benefit in the POI, we took the amount of the dividend advances reported in SIDOR's 1996 financial statement and calculated the amount of interest the company would have paid in 1996 if it had received an interest-free loan equal to the amount of the dividend advances. We used as our benchmark interest rate the annual average short-term interest rate reported by the GOV in its supplemental response. (If available, we intend to use the company's actual short-term interest rates, in the final determination, and we are seeking information from SIDOR on the actual interest rates it paid in 1996 on comparable short-term commercial loans.) The calculated interest savings was then divided by SIDOR's total sales in the POI. On this basis, we preliminarily determine the net subsidy for this program to be less than 0.005 percent *ad valorem* for SIDOR.

C. Government Provision of Iron Ore

Petitioners have alleged that Ferrominera, a government-owned company, provided iron ore to SIDOR for less than adequate remuneration. Iron ore is a bulky, low-priced commodity that is traded on international markets and is used in the production of steel. SIDOR purchases all of its iron ore from Ferrominera, the only Venezuelan producer of iron ore. Like SIDOR, Ferrominera is owned by the government and is one of the 37 companies in the CVG Group.

SIDOR has a multi-year supply contract with Ferrominera, under which Ferrominera sets SIDOR's iron ore prices on an annual basis. According to SIDOR's questionnaire response, no contract existed between SIDOR and Ferrominera for 1996 because the parties were unable to agree on the price. When Ferrominera announced a new price for 1996, SIDOR objected and tried to renegotiate the price. Because of this objection, Ferrominera did not apply SIDOR's new price immediately. Rather, it began invoicing at the new price in June 1996. After negotiations failed, SIDOR and Ferrominera entered into an arbitration process. Ultimately, the 1996 price originally proposed by Ferrominera was agreed upon retroactive to January 1, 1996. The unit price (*i.e.*, the price per "metric ton

natural iron unit") is set in U.S. dollars, and the terms of sale are FOB, place of loading. SIDOR is invoiced for its iron ore purchases at the end of each month, and the price in bolivars on the invoice is based on the exchange rate in effect on the last working day of the month.

According to the GOV, iron ore is an internationally traded commodity, and Ferrominera sets its prices in the domestic market based on prices in the international market. In Venezuela, Ferrominera is the only producer of iron ore in the country, and 99 percent of its domestic sales are to the steel industry. Because the steel industry is virtually the only user of iron ore, we preliminarily determine that the provision of iron ore by Ferrominera is specific under section 771(5A)(D) of the Act.

According to section 771(5)(E) of the Act, the adequacy of remuneration (with respect to a government's provision of a good) "shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions or purchase or sale."

In circumstances like those presented in this case (*i.e.*, where the government is the sole provider of a commodity and the commodity is sold on a non-competitive basis to a limited number of users), the adequacy of remuneration cannot be determined through an examination of prices charged by the government provider. In such circumstances, it is necessary to use another benchmark to determine whether the good is being provided for less than adequate remuneration. As noted above, the government is the sole domestic source of iron ore in Venezuela. Therefore, absent restrictions on imports, the choice to the consumer of iron ore is the price of the good charged by the government or the imported price of that good.

We preliminarily determine that the appropriate benchmark is the alternative price that SIDOR would face in Venezuela if it could not purchase iron ore from Ferrominera, that is, the price SIDOR would pay to import iron ore. Although the GOV placed general customs data on the record which indicates that very small quantities of iron ore were imported into Venezuela during the POI, we do not have any specific information about these imports to determine whether they could be used to determine the benchmark price. We do not know the prices per metric ton paid because we cannot discern the "metric ton natural iron unit" prices, and we do not know whether these imports involved iron ore that is comparable to the iron ore SIDOR purchased from Ferrominera. Although the information regarding the imports of iron ore into Venezuela during the POI cannot be used to determine the benchmark price, we consider it appropriate to use prices that SIDOR would pay to import the same type of iron ore that it purchased from Ferrominera during the POI. Absent prices for actual imports, we consider it appropriate to calculate a benchmark price based on import prices that would be available in Venezuela for the same type of iron ore. Accordingly, we calculated the benchmark price using published price information on the record for pellet feed, the type of iron ore SIDOR purchases from Ferrominera.

In order to determine whether iron ore is provided to SIDOR for less than adequate remuneration, we need to have complete information on both the prices and delivery terms of the iron ore. This is because comparison of delivered prices reflects the price alternatives a company would face in the marketplace.

The price of iron ore charged to SIDOR by Ferrominera is based upon two separate contracts. The first contract sets the price for the iron ore, while the second contract establishes the delivery charges for the iron ore. We have information on the record regarding the price of iron ore set in the first contract, however, we are lacking complete information on the terms of the delivery contract. The prices charged to SIDOR under the first contract by Ferrominera are FOB, place of loading. According to the GOV's supplemental response, the iron ore is loaded at Ferrominera's processing facility in Puerto Ordaz and transported by train directly to SIDOR's factory. SIDOR owns the rail equipment but Ferrominera provides the transportation service and maintenance for a fee. Because we did not become aware of this transportation arrangement until we received the supplemental questionnaire responses, we were unable to solicit additional information on this transportation arrangement between Ferrominera and SIDOR for use in this preliminary determination. We are seeking additional information on this transportation arrangement which will be considered in our final determination.

Because we are unable to analyze this transportation arrangement, we are basing our determination of whether SIDOR has been provided with iron ore for less than adequate remuneration solely on the FOB, place of loading prices for iron ore charged to it by Ferrominera rather than a delivered price to SIDOR. As noted above, the FOB, place of loading price charged to SIDOR by Ferrominera is based upon SIDOR taking delivery of the iron ore at Ferrominera's processing facility in Puerta Ordaz. We have included in the benchmark iron ore price the cost of ocean freight to Puerta Ordaz. Thus, both the price to SIDOR from Ferrominera and the benchmark price are on the same basis. To determine the costs of ocean freight for the import price, we used the information provided in the questionnaire response from SIDOR. We compared the prices that SIDOR paid for iron ore from Ferrominera to the benchmark price and found that the Ferrorminera price was lower than the benchmark price. Therefore, we preliminarily determine that Ferrominera's sales of iron ore to SIDOR during the POI were made for less than adequate remuneration. As noted above, we are still seeking information on the delivery contract between SIDOR and Ferrominera, and we are see seeking additional information on delivery costs to use in our benchmark price. We invited interest parties to comment on this methodology.

To calculate the benefit, we first multiplied the quantity of iron ore that SIDOR purchased during the POI by the benchmark price. We then subtracted from this total the amount SIDOR actually paid in order to derive the aggregate amount of benefit. Because iron ore is an input used for all of SIDOR's production, we divided this amount by the company's total sales. On this basis, we preliminarily determine the net subsidy for this program to be 2.34 percent *ad valorem* for SIDOR.

II. Programs Preliminarily Determined To Be Not Countervailable

A. GOV Loan to SIDOR in 1990

We initiated on this program based upon petitioners' allegation that the GOV replaced a $1,507 million commercial loan to SIDOR with a 15-year loan from the government. In its response to our questionnaire, the GOV submitted information demonstrating that this 1990 GOV loan to SIDOR was part of a debt restructuring program which was examined and found not countervailable in the *Final Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela; and Countervailing Duty Order for Ferrosilicon From Venezuela*, 58 FR 27539 (May 10, 1993). Because petitioners have provided no new information or evidence of changed circumstances to warrant a

reconsideration of that determination, we continue to find this GOV debt restructuring program, under which this 1990 loan was received, not countervailable.

III. Programs Preliminarily Determined To Be Not Used

A. Government Guarantees of SIDOR's Private Debt in 1987 and 1988

In 1987 and 1988, the GOV guaranteed loans provided to SIDOR by Credito Italiano and Kreditanstalt Fuer Wiederaufbau (KfW), respectively. Both of these loans were Deutschmark (DM) denominated loans linked to the London Interbank Offering Rate (LIBOR).

According to SIDOR's and the GOV responses, the 1987 and 1988 loans were specifically applied for and authorized as part of a program to finance the expansion of SIDOR's pipe mill. The approval documents specify that the loans were for the expansion of SIDOR's pipe mill, in particular for purchasing equipment. These were authorized under the December 10, 1987, "Law for the Contracting and Financing of the First Stage of the Project to Expand and Modernize SIDOR's Pipe Mill." Because the information submitted in the company and government responses states that the KfW and Credito Italiano loans were tied to financing the expansion of SIDOR's pipe mill, we preliminarily determine that the loans and the government guarantees of the loans are tied to non-subject merchandise and, thus, do not provide a benefit to wire rod. Therefore, we preliminarily determine that the GOV loan guarantees did not confer countervailable benefits on the production and/or exportation of subject merchandise, and that this program was not used during the POI.

B. Preferential Tax Incentives Under Decree 1477

Petitioners alleged that Decree 1477 provides partial or total income tax exemptions and other tax credits to companies in disadvantaged regions, including Bolivar, where SIDOR is located. According to petitioners, companies that relocated or commenced an expansion after March 23, 1976, qualify for tax incentives. In its response to our questionnaire, SIDOR stated that the company never applied for or received benefits under this program. Therefore, we preliminarily determine that this program was not used by SIDOR during the POI.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making a final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a subsidy rate for SIDOR, the one company under investigation. We also are applying SIDOR's rate to any companies not investigated or any new companies exporting the subject merchandise.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rod from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company	*Ad valorem* rate
SIDOR	13.06
All Others	13.06

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on September 22, 1997, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing, 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, eight copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 8, 1997. Eight copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than September 15, 1997. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. If this investigation proceeds normally, we will make our final determination by October 14, 1997.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 28, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20491 Filed 8–1–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–823]

Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Cindy Thirumalai or Daniel Lessard, Office of Antidumping/Countervailing

Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087 or 482–1778 respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that countervailable subsidies are being provided to Saarstahl AG (Saarstahl) and Ispat Hamburger Stahlwerke GmbH (IHSW), producers and exporters of steel wire rod from Germany. We have also preliminarily determined that Walzdraht Hochfeld GmbH (WHG) received *de minimis* subsidies and that we have insufficient information at this time to make a determination with respect to Brandenburger Elektrostahlwerke GmbH (BES). For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (62 FR 13866; March 24, 1997), the following events have occurred.

On April 2, 1997, we issued countervailing duty questionnaires to the Government of the Federal Republic of Germany (GOG), the Government of the Free and Hanseatic City of Hamburg (GOH), the Government of Saarland (GOS), Saarstahl, BES, IHSW, and WHG. We received responses to our questionnaires on May 27, 1997. We issued supplemental questionnaires to parties in June and July for which responses were receive in the same months. On May 2, 1997, we postponed the preliminary determination in this investigation until July 28, 1997 (62 FR 25172; May 8, 1997).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Germany is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of steel wire rod from Germany materially injure, or threaten material injury to, a U.S. industry. On April 30, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Germany of the subject merchandise (62 FR 23485).

Petitioners

The petition in this investigation was filed by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire (the petitioners), six U.S. producers of wire rod.

Subsidies Valuation Information

Period of Investigation

The period for which we are measuring subsidies (the "POI") is calendar year 1996.

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets to determine the allocation period for nonrecurring subsidies. See *General Issues Appendix* appended to *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226; July 9, 1993) (*General Issues Appendix*). However, in *British Steel plc.* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

In this investigation, the Department has followed the Court's decision in *British Steel.* Therefore, for the purposes of this preliminary determination, the Department has calculated company-specific AULs.

Based on information provided by Saarstahl and IHSW regarding the companies' depreciable assets, the Department has preliminarily determined that the appropriate allocation period for Saarstahl and IHSW is 10 years. The calculation of allocation periods for WHG and BES was unnecessary.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness methodology, see, *e.g.*, Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304 (July 9, 1993) or Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993).

Petitioners have alleged that Saarstahl was uncreditworthy in 1989 and between 1993 and 1996. They further allege that Hamburger Stahlwerke GmbH (HSW) was uncreditworthy in 1984 and 1994. Because neither company received long-term financing in the relevant years, we examined other factors to determine the firms' creditworthiness. In making our determinations, we examined Saarstahl's and HSW's current, quick, and interest/debt coverage ratios in addition to their net profit/loss for the three preceding years. Both Saarstahl and HSW experienced operating losses in those years (except 1988 for Saarstahl), and the financial ratios demonstrate that both companies were in poor financial health. The current ratio (current assets divided by current liabilities) measures the margin of safety available to cover any drop in the value of current assets, while the quick ratio (current assets excluding inventory and prepaids divided by current liabilities) shows the company's ability to pay its short-term liabilities. For both companies, the ratios were very small, demonstrating their difficulty in meeting their short-term liabilities and interest expenses. Furthermore, the interest/debt coverage ratios (net income plus interest expense plus taxes divided by interest expense), highlighted the firms' inability to meet existing interest payments. We preliminarily determine that Saarstahl was uncreditworthy in 1989 and HSW was uncreditworthy in 1994.

Because Saarstahl did not receive any countervailable benefits from the GOS or the GOG following its 1993 bankruptcy, we do not reach the question of Saarstahl's creditworthiness for this period. Moreover, because IHSW's allocation period is ten years, we are not examining subsidies received prior to 1987. Therefore, we do not need to analyze HSW's creditworthiness for that period.

Discount Rates

Saarstahl reported that German banks set interest rates for long-term, fixed rate commercial loans in reference to the yield earned on public bonds. The company explained that in establishing the interest rate for the commercial loans the banks normally add a margin of zero percent to two percent to the yield on public offerings depending upon the borrower's creditworthiness. Because neither Saarstahl nor IHSW provided a company-specific discount rate, we used German public bond rate plus a spread of two percent as the discount rate for Saarstahl in 1989 and IHSW in 1994. This rate represents the highest long-term interest rate which we could locate. For Saarstahl in 1989 and IHSW in 1994, we added a risk premium to establish the uncreditworthy discount rate.

Privatization

In the General Issues Appendix, we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI (i.e., in this case 1987 for Saarstahl and IHSW) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

In the current investigation, we are analyzing the privatization of Saarstahl in 1989 and subsequent spin-off in 1994. Additionally, we are investigating the privatization of IHSW in 1994.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Saarstahl

1. Forgiveness of Saarstahl's Debt in 1989

During the period 1978 to 1989, Saarstahl and its predecessor companies received massive amounts of assistance from the GOS and GOG. Repayment of these funds was contingent upon Saarstahl returning to profitability and earning a profit above and beyond the losses accumulated after 1978. This contingent repayment obligation was known as a Rückzahlungsverpflichtung or "RZV."

In 1989, the GOS reached an agreement with Usinor-Sacilor to combine Saarstahl with AD der Dillinger Huttenwerke (Dillinger) under a holding company, DHS-Dillinger Hutte Saarstahl AG (DHS). Pursuant to the combination agreement and as a condition for sale, in 1989 the GOG and GOS entered into a debt forgiveness contract (Entschuldungsvertrag, or "EV") which effectively forgave all the outstanding repayment obligations owed by Saarstahl to the Governments (*i.e.*, a total of DM 3.945 billion in debt was forgiven). The EV specified, however, that if Saarstahl went bankrupt, the GOG and GOS claims could be revived, but their claims would be subordinated to those of all other creditors.

After several years of unprofitable operation, Saarstahl filed for bankruptcy in 1993 under the German Bankruptcy Regulations (Konkursordnung). In 1994, the GOS bought Saarstahl back from Usinor Sacilor for DM 1. At the time of its bankruptcy, Saarstahl's liabilities exceeded its assets by a factor of four, not including its liabilities to the GOG and GOS. Both Governments filed

claims against the Saarstahl bankruptcy estate based on the RZV debt that was conditionally forgiven in 1989. These EV-related claims were rejected by the bankruptcy trustee as invalid in 1995. The GOG and GOS chose not to appeal the rejection of their bankruptcy claims, on the grounds that the subordination of their claims made the likelihood of recovery very small, and not worth the high cost of litigating the matter.

In the Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany, 58 FR 6233, 6234 (January 27, 1993) (Lead and Bismuth), we found that Saarstahl's RZV and related government debt were effectively forgiven by the 1989 EV, thus conferring a countervailable benefit on Saarstahl as of 1989. Respondents have argued that the attempt to revive the RZVs by the GOG and the GOS disqualifies the signing of the 1989 EV as the countervailable event. However, as noted above, the EV-related bankruptcy claims of the GOS and GOG were rejected as invalid by the bankruptcy trustee. Thus, the 1993 bankruptcy proceeding left completely undisturbed the provisions of the 1989 EV agreement. Respondents further argue that the RZVs were worthless at the time of the EV. However, this argument was rejected in Lead and Bismuth (58 FR 6233, 6237) and the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Germany, 58 FR 37315, 37323 (July 9, 1993) (Certain Steel) and the attendant litigation. See Saarstahl AG v. United States, 1997 CIT LEXIS 62, slip op. 97–67 (CIT 1997) and British Steel plc v. United States, 936 F. Supp. 1053, 1069–70 (CIT 1996).

Therefore, we preliminarily determine that the debt forgiveness constitutes a financial contribution in 1989 within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOG and GOS providing a benefit in the amount of the debt forgiveness, DM 3.945 billion. Because it was a one time event, we consider it to be a non-recurring grant. Additionally, we analyzed whether the debt forgiveness provided to Saarstahl was specific "in law or in fact," within the meaning of section 771(5A) of the Act. Consistent with Lead and Bismuth (58 FR 6233) and Certain Steel (58 FR 37315), we find that the debt forgiveness provided to Saarstahl was limited to a specific enterprise or industry because it was provided to one company.

To calculate the countervailable subsidy, we used our standard declining balance grant methodology. The amount of subsidy allocated to the POI was adjusted in accordance with our privatization methodology (described above) to reflect the privatization of Saarstahl in 1989 and the spin-off of Saarstahl from DHS 1994. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 16.92 percent *ad valorem* for Saarstahl.

2. Assurance of Liquidity Provided to Private Banks by the GOS

Toward the end of 1985, the GOS presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive loans in the amount of DM 350 million. In a February 20, 1986 letter from the banks to the GOS, the banks agreed to forgive DM 217.33 million of debt owed to them by Saarstahl (DM 216.82 of which was forgiven in 1989), if the GOG and GOS fulfilled certain prerequisites. Two of the prerequisites were that the Governments forgive all debt owed to them by Saarstahl and that the GOS secure the future liquidity of Saarstahl. In an April 4, 1986 letter from the Governor of Saarland responding to the banks, the GOS agreed to forgive all debts owed to it by Saarstahl and to secure the liquidity of Saarstahl as it had in the past.

We preliminarily determine that in assuring the future liquidity of Saarstahl the GOS provided a financial contribution to Saarstahl. Specifically, this assurance granted a "potential direct transfer of funds" within the meaning of section 771(5). By assuring the future liquidity of Saarstahl, the GOS effectively guaranteed that Saarstahl would have the funds to satisfy its future obligations, which included the outstanding debt owed to the banks. This assurance was consistent with the GOS's long history of supporting Saarstahl. We also preliminarily determine that the assurance was provided to a specific enterprise or industry, Saarstahl.

While the GOS's assurance of future liquidity resembled a loan guarantee, it differed in certain important aspects from loan guarantees typically examined by the Department. First, the GOS did not promise to take responsibility for payment of the debt owed to the banks if Saarstahl failed to perform. Rather, the GOS reached an agreement with the private banks whereby the GOS would maintain Saarstahl's liquidity (*i.e.*, Saarstahl's ability to service its outstanding debts). Additionally, other characteristics of a typical loan guarantee which potentially confer a benefit were not manifested in the liquidity assurance. For example, the assurance did not necessarily affect the amount that Saarstahl paid on the outstanding loans in the form of fees and interest costs—the typical indicators of the benefit from a loan guarantee. Rather, the consequence of the assurance was that Saarstahl received partial debt forgiveness from the banks. Because of this, we are calculating the benefit conferred by the liquidity assurance as the amount of debt forgiven.

To calculate the countervailable subsidy, we followed the methodology described in the *Forgiveness of Saarstahl's Debt in 1989* section, above. We then divided the portion of the benefit attributable to the POI by the total sales of Saarstahl during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.93 percent *ad valorem* for Saarstahl.

B. IHSW

994 IHSW Debt Forgiveness

In 1984, Hamburgische Landesbank Girozentrale (HLB), a bank wholly owned by the GOH, provided HSW with a line of credit in the amount of DM 130 million. The line of credit was granted for a period of one year and was renewed every year until 1994. Pursuant to a *Kreditauftrag* between the GOH and HLB, in the event that HSW failed to service this debt, the GOH was obligated to compensate the HLB for 60 percent of the credit line (*i.e.*, DM 78 million). In 1992 and 1993, HSW suffered significant losses, and the HLB refused to extend the credit line. At that point, the GOH instructed the HLB to extend HSW's line of credit, and the GOH and HLB entered into an agreement extending the *Kreditauftrag* so that the GOH assumed responsibility for the total amount loaned to HSW under the line of credit. At the beginning of 1994, the line of credit totaled approximately DM 174 million. While the Department will not consider a loan provided by a government-owned bank to be a loan provided by the government, *per se*, the actions taken by the GOH in 1984, 1992, and 1993 pursuant to the *Kreditauftrag* clearly demonstrate that the HLB (a bank wholly-owned by the GOH) was acting on behalf of the GOH in this instance.

In 1994, HSW was sold to Venuda Investments B.V. (Venuda), IHSW's parent company. At the time of privatization, the line of credit totaled DM 167.5. Under the terms of the sale, Venuda paid DM 10 million for HSW.

With respect to the line of credit, DM 154 million of the total was sold to Venuda for approximately DM 60 million according to a formula based on the net current asset value of HSW in 1994 (*i.e.*, the difference between current assets and liabilities (less the debt owed to HLB)). Although the sale of HSW was structured to have two components, the sale of shares and the sale of debt, we have treated this as a single transaction and we consider the payments made by Venuda (*i.e.*, DM 10 million and DM 60 million) to represent the price paid for HSW. The remainder of the credit line, DM 13.4 million representing "non-cash" deposits (*e.g.*, LCs, drafts, etc.), was repaid to HLB by HSW in early 1995.

Based on our view of the sale of HSW, *i.e.*, that the proceeds from both the share and debt purchase comprise the sale price, we preliminarily determine that in the year that HSW was sold the DM 154 million owed by HSW under the line of credit was forgiven. This debt forgiveness constitutes a financial contribution in the form of a direct transfer of funds from the GOH providing a benefit in the amount of DM 154 million in 1994. Moreover, we analyzed whether the program is specific "in law or in fact," within the meaning of section 771(5)(A) of the Act. Since the debt forgiveness was only provided to one company, we preliminarily determine that it is limited to a specific enterprise.

To calculate the countervailable subsidy, we used our standard grant methodology. Although HSW was sold in 1994, the company received no nonrecurring subsidies prior to the year of privatization and within its allocation period (*i.e.*, during the period 1987 through 1993). Consequently, under our privatization methodology none of the purchase price paid to the GOH constitutes repayment of prior subsidies. Thus, we allocated the subsidy according to our grant methodology and divided the benefit attributable to the POI by the total sales of IHSW during the same period. On this basis, we determine the countervailable subsidy for this program to be 5.54 percent *ad valorem* for IHSW.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Saarstahl

Worker Assistance Under Article 56(2)(b)

Under Article 56(2)(b) of the ECSC Treaty, persons employed in the iron, steel and coal industries who lose their jobs may receive assistance for social adjustment. This assistance is provided to workers affected by restructuring measures, particularly workers withdrawing from the labor market into early retirement and workers forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. In 1993 through 1995, a supplementary assistance program was available to help displaced steel workers affected by massive restructuring in the industry. The supplementary program provided additional payments for early retirement (max. ECU 5,000/worker), redeployment measures (max. ECU 4,000/worker), and unemployment measures (max. 2,000 ECU/worker).

During the POI, Saarstahl received payments for its workers under Article 56(2)(b). These payments reimbursed Saarstahl for payments it had made to its workers.

When analyzing programs which provide assistance to the workers of a company, the Department examines whether the program in question relieves the company of an obligation it normally would otherwise incur. As we noted in Certain Steel (58 FR 37315, 37320), German companies have no legal obligations to compensate severed employees, except to the extent that they assume obligations under a social plan. Because Saarstahl had no social plan in effect during the POI, the ECSC assistance did not relieve Saarstahl of an obligation it otherwise would have had. Thus, we preliminarily determine that the ECSC benefits provided to Saarstahl are not countervailable.

B. IHSW

Provision of Land Lease

Pursuant to a 1986 lease agreement between HSW and the GOH, IHSW leases land located in the port of Hamburg from the GOH. The GOH owns approximately one third of the commercial and industrial land in the port area and leases that land under approximately 500 different lease agreements. The GOH lease rates in the port area are established by the Office of the Appraisal Committee for Property Values (Appraisal Committee), an autonomous body which records and analyzes agreements relating to the purchase and sale of land in Hamburg. According to the GOH questionnaire response, the lease rates are set according to such factors as: (1) Market value of property, (2) potential for use and facilities available in specific areas, (3) rentals for comparable areas being used, and (4) terms and conditions being paid in other Northern ports.

The GOH uses a standard lease for all enterprises in the port area. The lease has four rate categories which are based on the size and location of the property (*e.g.*, land-locked vs. direct water access). Thus, IHSW's lease contains the same terms as all other lease agreements signed with enterprises in the port area.

Because IHSW pays a standard rate charged by the GOH to all enterprises leasing land similar to IHSW's and because these prices appear to be set in reference to market conditions, we preliminarily determine that IHSW's lease rate provides adequate remuneration to the GOH and, thus, is not countervailable. Prior to our final determination, we will attempt to obtain further information with respect to the number and diversity of industries to which the GOH leases land in the port of Hamburg and private lease rates for land comparable to that of IHSW in the port area.

III. Programs for Which Additional Information Is Required

BES has claimed that each of the programs under which it received government assistance is a noncountervailable subsidy to a disadvantaged region in accordance with section 771(5B)(C) of the Act. For purposes of the final determination, we will be seeking more information and giving further consideration to whether noncountervailable subsidies are being provided to BES under the following programs:

1. *Improvement of the Regional Economies Act Investment Grants.*
2. *Investment Allowance Act Grants.*
3. *Special Depreciation Pursuant to Section Four of the Regional Development Law.*

We are also seeking additional information as to any subsidies which BES may have received during the period 1990 through 1992 and the circumstances surrounding the sale of the plant which effectively became BES.

IV. Programs Preliminarily Determined To Be Not Used

A. Saarstahl

Post-Bankruptcy Subsidies to Saarstahl

B. IHSW

In 1984, HSW emerged from bankruptcy proceedings and was taken over by a limited partnership called Protei Produktionsbeteiligungen GmbH & Co. KG (Protei). Because Protei was financially unable to provide New HSW with equity, the HLB "loaned" DM 20 million to Protei. The DM 20 million financing was provided to HLB by the GOH. HSW used this capital to purchase

the assets and business of Old HSW from its receiver.

According to the terms of the contract which provided these funds, repayment became due from the profits of Protei which, in turn, were derived from HSW's profits. The contract also provided that Protei could not liquidate HSW without the approval of HLB and HLB reserved rights regarding the appointment of management and members of the supervisory committee. Between 1987 and 1988, DM 2.8 million in "principal" payments and DM 2.7 million in "interest" were paid by HSW leaving an unpaid balance of DM 17.2 million.

We have preliminarily determined that the DM 20 million "loan" to Protei should be treated as equity received in 1984 in light of the terms of the financing. Although the money was given in the form of a loan to Protei, the circumstances of the loan indicate that the funds were more in the nature of equity. First, as noted above, payments on the loan were contingent on HSW being profitable: So, if the company never became profitable, there was no obligation for the loan to be repaid. Second, under the terms of the loan, Protei relinquished *pro rata* its share of profits from HSW based on the ratio between the DM 20 million loan and the total share capital of HSW. Hence, HLB's share of any future profits generated by HSW would be calculated as if the loan were paid-in capital. Third, although the loan was made to Protei, neither of the partners in the limited partnership was liable for the loan, suggesting that the Protei served as a mechanism for the GOH to invest in HSW. Fourth, as noted above, the lender, HLB, imposed numerous conditions on Protei which served to insert HLB into important management decisions affecting HSW. Finally, when this loan was examined by the Commission of the European Communities (the Commission) to determine whether it constituted state aid, the Commission determined that the loan should be considered as risk capital. Among the data developed by the Commission was a statement by the German government that the GOH "was exposed to financial risk fully comparable to the risk a shareholder injecting risk capital has to bear without becoming owner of the company." (The Commission's decision is printed in the Official Journal of the European Communities, No L 78, Vol 39, March 28, 1996, at pp. 31 ff.) While the Commission's characterization of this loan as equity is not dispositive, their reasoning in this instance is consistent with our preliminary analysis.

Given our preliminary determination that the DM 20 million loan in 1984 should be treated as equity and, in light of HSW's AUL of 10 years, this 1984 equity infusion would not give rise to benefits in the POI even if the infusion were a countervailable subsidy. Therefore, we are treating this equity as well as two other programs as "not used':

1. *1984 Equity Infusion Through Protei.*

2. *1984 Steel Investment Allowance Grant.*

3. *1984 Federal Ministry for Research and Technology (BMFT) Grant.*

Other programs that were not used by IHSW:

4. *1984 Structural Improvement Assistance Grant.*

5. *1984 Loan Guarantee to HSW.*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making a final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation. WHG reported that the only subsidy it received was research and development assistance pursuant to the Industrial Technology Program of the State of North-Rhine/Westphalia. Even assuming this assistance constituted a countervailable subsidy, the benefit would be *de minimis*. Therefore, we preliminarily determine that WHG would be excluded from any potential countervailing duty order with respect to merchandise produced and exported by WHG.

To calculate the all others rate, we weight-averaged the individual company rates by each company's exports of the subject merchandise to the United States. We did not include in the weighted-average rate the companies with zero or *de minimis* subsidy rates.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rod from Germany, except those of BES and WHG, which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Ad Valorem Rate

Saarstahl 17.85 percent
IHSW 5.54 percent
All Others 11.13 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled for September 22, 1997, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, eight copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 8, 1997. Eight copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than September 15, 1997. An interested party may make an affirmative presentation only on arguments included in that

party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. If this investigation proceeds normally, we will make our final determination on October 14, 1997.

This determination is published pursuant to sections 703(f) and 771(i) of the Act.

Dated: July 28, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20492 Filed 8–1–97; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071497C]

Endangered and Threatened Wildlife: Draft Recovery Plan for Shortnose Sturgeon

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

ACTION: Notice of Availability of a Draft Recovery Plan; request for comments.

SUMMARY: NMFS is announcing the availability of the draft recovery plan for shortnose sturgeon (*Acipenser brevirostrum*). NMFS is soliciting review and comment from the public on the draft plan, and will consider these comments in the approval of a final recovery plan.

DATES: Comments on the draft recovery plan must be received on or before September 3, 1997.

ADDRESSES: Request a copy of the draft recovery plan from Mary Colligan, Habitat and Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930. Written comments and materials regarding the plan should also be directed to Mary Colligan at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Colligan at 508–281–9116.

SUPPLEMENTARY INFORMATION:

Background

The shortnose sturgeon, *Acipenser brevirostrum*, is an endangered fish species that occurs in large coastal rivers of eastern North America. It inhabits 18 rivers ranging from the Saint John River in New Brunswick, Canada to the St. Johns River, Fl. The Endangered Species Act (ESA) requires NMFS to develop and implement recovery plans for most species that are listed under the ESA as threatened or endangered and that are under the jurisdiction of NMFS. In May 1997, the Shortnose Sturgeon Recovery Team submitted its final draft of the recovery plan to NMFS.

The draft recovery plan includes a synopsis of the biology and distribution of shortnose sturgeon, a description of factors affecting species recovery, an outline of actions needed to recover the species and an implmentation schedule for completing specific recovery tasks.

Public Comments Solicited

NMFS intends that the final recovery plan will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions are solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with the draft recovery plan.

Dated: July 30, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–20484 Filed 8-1-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072897C]

Marine Mammals

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

ACTION: Issuance of Letters of Confirmation to conduct scientific research under the General Authorization.

SUMMARY: Pursuant to provisions of the Marine Mammal Protection Act, as amended, (16 U.S.C. 1361 *et seq.*, specifically, 104(c)(3)(C)) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216.45) letters of confirmation (LOC) to conduct level B harassment of marine mammals in the wild under authority of the General Authorization for Scientific Research have been issued. Level B harassment, as defined in section 216.3, means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild. The following letters of confirmation were issued to individuals or organizations from January 1, 1996, through June 30, 1997:

Dr. Paul H. Forestell, Pacific Whale Foundation, Associate Professor and Director, Psychobiology Program, Social Science Division, Montauk 222, Long Island University, Southampton, Long Island, NY 11968 (LOC No. 21);

Dr. Robert F. Young, Assistant Professor, Marine Science Department, Coastal Carolina University, P.O. Box 1954,

Conway, SC 29526 (LOC No. 22);

Dr. Andrew J. Read, Assistant Professor, Duke University Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516 (LOC No. 23);

Howard W. Braham, Ph.D., Director, National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Room 2149, Seattle, WA 98115–0070 (LOC Nos. 782–1306, 782–1360, and 782–1352);

Mr. John J. Burns, Living Resources, Inc., P.O. Box 83570, Fairbanks, AK 99708–3570 (LOC No. 25);

Dr. Andrew J. Read, Assistant Professor, Duke University Marine Laboratory, c/o Clearwater Marine Aquarium, 249 Windward Passage, Clearwater, FL 34630 (LOC No. 26);

Mr. Kenneth C. Balcomb, III, Center for Whale Research, Inc., 1359 Smuggler's Cove Road, Friday Harbor, WA 98250 (LOC No. 27);

Mr. T. David Schofield, Senior Mammalogist/Marine Animal Rescue Coordinator, National Aquarium in Baltimore, Pier 3, 501 East Pratt Street, Baltimore, MD 21202–3194 (LOC No. 28);

Mr. Shane Guan, Grice Marine Biological Laboratory, University of Charleston, 205 Fort Johnson, Charleston, SC 29412 (LOC No. 29);

Dr. Harold N. Cones, Professor and Chairman, Department of Biology, Chemistry and Environmental Sciences, Christopher Newport University, 30 Shoe Lane, Newport News, VA 23606–2998 (LOC No. 30);

Dr. Bernd Wursig, Director, Marine Mammal Research Program, Texas A&M University, 4700 Avenue U/Building 303, Galveston, TX 77551 (LOC No. 31);

Ms. Marilyn Mazzoil, 17630 NW 67th Avenue #1211, Miami, FL 33015 (LOC No. 32);

Mr. Daniel E. Eastman, Proprietor, Adventures West Consulting, 2907 Montlake Blvd. East, Seattle, WA 98112 (LOC No. 33);

Dr. W. John Richardson, LGL Ltd., Environmental Research Associates, 22 Fisher Street, P.O. Box 280, King City, Ontario L7B 1A6, Canada (LOC No. 481–1382);

Dr. John G. Morris, Department of Biological Sciences,

Florida Institute of Technology, 150 West University Blvd., Melbourne, FL 32905 (LOC No. 819–1336);

Dr. Daniel K. Odell, Sea World, Inc., 7007 Sea World Drive, Orlando, FL 32821–8097 (LOC No. 752–1333);

Dr. Bradford E. Brown, Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149 (LOC No. 779–1334);

Dr. James T. Harvey, Associate Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450 (LOC No. 555–1389); and

Ms. Maddalena Hearzi, 13955 Tahiti Way, # 257, Marina del Ray, CA 90292 (LOC No. 856–1366).

ADDRESSES: These authorizations and related documents are available for review upon written request or by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson (F/PR1), Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–2289).

Dated: July 29, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–20485 Filed 8-1-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Notice Of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The members of the Review Panel and other participants will discuss matters related to the functions and operations of the Review Panel, issues related to strategic planning and program evaluation, the status of on-going Sea Grant programs and initiatives, and recommendations on the application for designation of a Sea Grant College.

DATES: The announced meeting is scheduled during two days: August 13 and 14, 1997.

ADDRESSES: The Madison Concourse Hotel, 1 West Dayton Street, Madison, Wisconsin 53703.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizen's groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is as follows:

Wednesday, August 13, 1997

8:30 a.m. Approval of Last Meeting Minutes
8:45 a.m. NOAA Update
9:15 a.m. Year of the Ocean Update
10:15 a.m. National Sea Grant Office Update
12:00 p.m. Congressional Update
12:15 p.m. *Lunch*
1:30 p.m. Sea Grant Review Panel Subcommittee Reports (Program Evaluation; Long Range Planning; Liaison Reports)
5:00 p.m. Sea Grant Review Panel Bylaws Discussion
5:30 p.m. *Adjourn*

Thursday, August 14, 1997

8:00 a.m. Report from the Sea Grant Association
8:20 a.m. Illinois/Indiana Sea Grant College Application Discussion
9:30 a.m. Change of Chair
9:45 a.m. Chair-Elect Election
10:30 a.m. Planning for Next Year
11:30 a.m. Old/New Business Discussion
12:00 p.m. *Adjourn.*

The meeting will be open to the public.

Dated: July 25, 1997.

Elbert W. Friday,

Assistant Administrator, for Oceanic and Atmospheric Research.

[FR Doc. 97–20486 Filed 8–1–97; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), an open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The meeting will be held from 10:00 a.m. until 4:00 p.m. on Monday, September 22, 1997.

ADDRESSES: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

FOR MORE INFORMATION CONTACT: David E. Bucher, Deputy Assistant Commissioner for Trademark Policy and Projects, by mail marked to his attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202–3513; by telephone at (703) 308–9100, ext. 20; by fax at (703) 308–9099; or by e-mail to dave.bucher@uspto.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

(1) Current Trademark Office Performance.

(2) Policy Issues.

(3) TTAB Issues, including update on Rules Package.

(4) Finance.

(5) Automation.

(6) Domestic Legislation.

(7) International Trademark Issues.

Dated: July 28, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–20396 Filed 8–1–97; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–57–000]

Columbia Gulf Transmission Company; Notice of Refund Report

July 29, 1997.

Take notice that on July 24, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing with the Commission its Refund Report made to comply with the Docket No. RP97–149.

Columbia Gulf states that it has credited refunds received from Gas Research Institute (GRI) in the above referenced docket to eligible firm customers on a pro rata basis. Columbia Gulf states that it made these refunds ($116,055.27) in the form of credits to invoices issued on or around May 10, 1997, which were payable to Columbia on or before June 10, 1997.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 5, 1997. 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. 97–20420 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–151–004]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 29, 1997.

Take notice that on July 24, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute First Revised Sheet No. 87, with an effective date of June 1, 1997.

Mid Louisiana asserts that the purpose of this filing is to comply with the Commission's Letter Order, dated July 15, 1997 in Docket No. RP97–151–003 wherein the Commission directed Mid Louisiana to refile the stated tariff sheet indicating version numbers for GISB standards incorporated by reference.

Mid Louisiana states that the modifications evidenced on the enclosed tariff sheets reflect Mid Louisiana's compliance with such directives. The sheet is submitted with the effective date unchanged, June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 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 compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20429 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–56–000]

NorAm Gas Transmission Company; Notice of Refund Report Filing

July 29, 1997.

Take notice that on July 24, 1997, NorAm Gas Transmission Company (NGT) filed a refund report pursuant to the Commission's February 22, 1995, Order in Docket No. RP95–125 (70 FERC ¶ 61,205).

NGT states that 1996 Gas Research Institute Tier 1 refunds totaling $258,796, were made to its eligible firm transportation customers during the period of June 20 to June 30, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene on protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing on are file with the Commission and are available for public inspection. '

Lois D. Cashell,

Secretary.

[FR Doc. 97–20419 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–657–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 29, 1997.

Take notice that on July 22, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP97–657–000 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 and 157.216) for authorization to abandon its existing Issaquah Meter Station by removal and its existing Issaquah Lateral by sale to Puget Sound Energy, Inc. (Puget), and to construct and operate an upgraded, replacement Issaquah Meter Station at a new site in King County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–443–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states the Issaquah Lateral consists of 1.4 miles of 6-inch lateral pipeline, associated valves and appurtenances, extending westward form milepost 1377 on Northwest's mainline in King County, Washington. Northwest states the Issaquah Meter Station is located at the downstream terminus of the Issaquah Lateral and consists of one 8-inch orifice meter, one 8-inch turbine meter, four 4-inch dual port regulators in monitor configuration, 6-inch inlet and outlet piping, associated valves and appurtenances. Northwest states the existing meter station has a design delivery capacity of 37,800 Dth per day at the current contractual delivery pressure of 260 psig.

Northwest states that Puget requested Northwest to upgrade the Issaquah delivery point to provide increased delivery capacity and a higher delivery pressure to enable Puget to serve new customers in this rapidly-growing market.

Northwest states that Northwest and Puget have entered into a Facilities Agreement dated June 30, 1997, which provides for the construction of upgraded replacement facilities at the relocated Issaquah Meter Station site, adjacent to Northwest's mainline at milepost 1377.2. Northwest states the tap facilities will consist of a 10-inch tap on Northwest's 26-inch mainline, an 8-inch tap on the 30-inch loop line, valves and appurtenances. Northwest states the new meter station will consist of inlet piping connecting the tap facilities to the relocated meter station, two 8-inch turbine meters, two 8-inch regulators, two 6-inch regulators, station piping, associated valves and appurtenances. Northwest states the replacement meter station will have a design delivery capacity of approximately 75,900 Dth per day at a delivery pressure of 475 psig.

Northwest states the Facilities Agreement provides that Northwest will construct and own the mainline tap for the new meter station and Puget will construct and own the remainder of the meter station facilities. Northwest states that pursuant to an Operating Agreement between Puget and Northwest, dated March 26, 1994, as amended, the new Issaquah Lateral metering facilities to be owned by Puget will be operated by Northwest as part of its open-access transmission system.

Northwest states that the total cost for construction of the upgraded and relocated replacement meter station will be approximately $623,800; $40,400 for new tap facilities to be built and owned by Northwest, and reimbursed by Puget, and the remainder for new meter facilities to be built and owned by Puget.

Any person or the Commission's staff may, within 45 days after 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 (28 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, 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. 97–20417 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–103–003]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 29, 1997.

Take notice that on July 25, 1997, OkTex Pipeline Company (OkTex), filed the tariff sheets in compliance with the Commission's directives in Order's No. 587 and 587–B.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 17, 1996, Order No. 587 in Docket No. RM96–1–000, Order No. 587–B, and Commission Order issued May 1, 1997, in Docket No. RP97–103–001 and Docket No. RP97–103–002. OkTex further states that Order No. 587 contemplates that OkTex will implement the GISB consensus standards for June 1997 business, and that the tariff sheets therefore reflect an effective date of June 1, 1997.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20416, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20427 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–662–000]

Panhandle Eastern Pipe Line Company; Notice of Application

July 29, 1997.

Take notice that on July 24, 1997, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–662–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a segment of pipeline and appurtenant facilities located in Moore County, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that the facilities consist of approximately 910 feet of the 22-inch Sunray Station Suction Line. Panhandle proposes of abandon approximately 774 feet of the line in place and states that approximately 136 feet of the line would be removed by the Texas Department of Transportation (Texas DOT). It is stated that the abandonment would not affect service to Panhandle's customers because the remaining segment of the line, approximately 2,695 feet of suction line, would continue to be used to transport gas from the Maxus Diamond Shamrock Sunray Plant. It is stated that the abandonment is required because the Texas DOT has notified Panhandle that it intends to expand the Texas State Road, FM 119, by mid-August 1997. It is asserted that the segment of line proposed for abandonment has been idle since operations at the Diamond Shamrock McKee Plant were suspended. It is estimated that the cost of abandoning facilities as proposed would be $16,350.

Any person desiring to be heard or to make any protest with reference to said

application should on or before August 5, 1997 file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR. 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing

Lois D. Cashell,

Secretary.

[FR Doc. 97–20418 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–150–006]

Richfield Gas Storage System; Notice of Compliance Filing

July 29, 1997.

Take notice that on July 23, 1997, Richfield Gas Storage System (Richfield) tendered for filing as part of its FERC Gas Tariff, Substitute Volume No. 1, the tariff sheets listed below to become effective June 1, 1997.

Richfield states that this filing is made in compliance with the Commission's Letter Order dated July 18, 1997, in Docket No. RP97–150–004.

FERC Gas Tariff; Substitute Volume No. 1

Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 37
Substitute Original Sheet No. 41B

Richfield states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 97–20428 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–428–000]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

July 29, 1997.

Take notice that on July 25, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective August 26, 1997:

First Revised Sheet No. 85

Tuscarora asserts that the purpose of this filing is to comply with Ordering Paragraph B of Order No. 636–C, issued February 27, 1997, in Docket Nos. RM91–11–006 and RM87–34–072. In Order No. 636–C, the Commission required that any pipeline with a right-of-first-refusal tariff provision containing a contract term longer than five years revise its tariff to reflect the new five year cap.

Tuscarora states that copies of this filing were mailed to all customers of Tuscarora and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20431 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–317–002]

Williams Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

July 29, 1997.

Take notice that on July 23, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute Third Revised Sheet No. 254. The proposed effective date of this tariff sheet is May 1, 1997.

WNG states that it made a filing on April 1, 1997 and a compliance filing on May 15, 1997 to amend Article 14 of the General Terms and Conditions of WNG's FERC Gas Tariff to provide for the extension of WNG's pricing differential mechanism (PDM) until October 1, 1999. By order issued July 21, 1997, the Commission approved the extension until October 1, 1998, and directed WNG to file a revised tariff sheet within 10 days of the issuance of the order. The instant filing is being made in compliance with the order.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 97–20430 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–639–000]

Williston Basin Interstate Pipeline Company; Notice of Application

July 29, 1997.

Take notice that on July 15, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–639–000, an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, requesting authority to change capacities at certain receipt and delivery points, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin seeks authorization to increase or decrease capacities at certain receipt and delivery points listed on Williston Basin's Master Receipt/Delivery Point List which was filed as part of this FERC Gas Tariff, Second Revised Volume No. 1 in Docket Nos. RS92–13–000, *et al.* The Master Receipt/Delivery Point List specifies the maximum daily capacity for each of Williston Basin's delivery and receipt points. Williston Basin states that the proposed changes are the result of a reevaluation of the assumptions used for: meter inlet pressures; filtering device differential pressures; regulator selection; regulation inlet pressures; and maximum and minimum allowable distribution pressures. Williston Basin states that there will be no costs associated with the restatement of the maximum receipt and/or delivery capacities.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Nature Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20416 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–964–000, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 28, 1997

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. ER97–964–000]

Take notice that on July 21, 1997, Consumers Energy Company (Consumers) submitted for filing an amendment to its prior December 31, 1996 and March 13, 1997 filings of a wholesale power sales tariff (PST–1) to permit Consumers to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Consumers requests an effective date of January 1, 1997, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Corp.

[Docket No. ER97–2567–000]

Take notice that on July 17, 1997, Cinergy Corp., tendered for filing a letter requesting a withdrawal of the Enabling Agreement with New York Power Authority.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER97–2585–000]

Take notice that on July 15, 1997, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Nevada Power Company

[Docket No. ER97–3042–000]

Take notice that on July 15, 1997, Nevada Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER97–3362–000]

Take notice that on July 1, 1997, July 14, 1997 and July 16, 1997, Washington Water Power Company tendered for filing an amendments in the above-referenced docket.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–3623–000]

Take notice that on July 7, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison

Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for WPS Energy Services, the Transmission Customer. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is June 6, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER97–3624–000]

Take notice that on July 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Bridgestone/Firestone, Inc., 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 July 1, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER97–3625–000]

Take notice that on July 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Toledo Edison and Cleveland Electric Illuminating Company (collectively known as Centerior Energy) will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 10, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Hudson Gas & Electric Corporation

[Docket No. ER97–3626–000]

Take notice that Central Hudson Gas & Electric Corporation (CHG&E), on July 7, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and MidCon Power Services Corp. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER97–3627–000]

Take notice that Central Hudson Gas & Electric Corporation (CHG&E), on July 7, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Williams Energy Services Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No.1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER97–3628–000]

Take notice that on July 7, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Engelhard Power Marketing, Inc. (Engelhard).

Cinergy and Engelhard are requesting an effective date of July 2, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER97–3629–000]

Take notice that on July 7, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Engage Energy US, L.P. under PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Mississippi Power Company

[Docket No. ER97–3630–000]

Take notice that on July 7, 1997, Mississippi Power Company, tendered for filing a Service Agreement pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff with South Mississippi Electric Power Association for the South Lucedale Delivery Point to Singing River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point to be known as South Lucedale.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER97–3631–000]

Take notice that on July 7, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Arkansas Electric Cooperative Corporation and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to AECC pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER97–3632–000]

Take notice that on July 7, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with ProMark Energy, under the NU System Companies' System Power Sales/Exchange Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the ProMark Energy.

NUSCO requests that the Service Agreement become effective July 3, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER97–3633–000]

Take notice that on July 7, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Short Term Firm Transmission Service Agreement between itself and (UPPCO). The Transmission Service Agreement allows UPPCO to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, accepted for filing in Docket No. OA97–576.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER97–3634–000]

Take notice that on July 7, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Entergy Power Marketing Corp., (EPMC). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on EPMC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. South Carolina Electric & Gas Company

[Docket No. ER97–3635–000]

Take notice that on July 7, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Morgan Stanley Capital Group, Inc. (MSCG) and Public Service Electric & Gas Company (PSE&G) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon MSCG, PSE&G, and the South Carolina Public Service Commission.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. MidAmerican Energy Company

[Docket No. ER97–3636–000]

Take notice that on July 7, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Non-Firm Transmission Service Agreement with CMS Marketing, Services and Trading Company (CMS) dated June 20, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 20, 1997 for the Agreement and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on CMS, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Interstate Power Company

[Docket No. ER97–3637–000]

Take notice that on July 7, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and PacifiCorp. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to PacifiCorp.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. San Diego Gas & Electric Company

[Docket No. ER97–3638–000]

Take notice that on July 7, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notices of Cancellation for the following:

1. FERC Rate Schedule No. 93 Interruptible Transmission Service Agreement between San Diego Gas & Electric Company and Arizona Public Service Company, dated March 15, 1982, to be terminated August 1, 1997;

2. FERC Rate Schedule No. 67 Interruptible Transmission Service Agreement between San Diego Gas & Electric Company and Imperial Irrigation District, dated December 4, 1984, to be terminated August 1, 1997;

3. FERC Rate Schedule No. 66 Interruptible Transmission Service Agreement between San Diego Gas & Electric Company and the City of Burbank, dated December 10, 1984, to be terminated August 1, 1997;

4. FERC Rate Schedule No. 74 Interruptible Transmission Service Agreement between San Diego Gas & Electric Company and El Paso Electric Company, dated January 29, 1988, to be terminated August 1, 1997;

5. FERC Rate Schedule No. 58 Interruptible Transmission Service Agreement between San Diego Gas & Electric Company and Southern California Edison Company, dated October 17, 1983, to be terminated August 1, 1998; and

6. Service Agreement for Firm Point-to-Point Transmission Service between San Diego Gas & Electric Company and San Diego Gas & Electric Company—Energy Trading, dated May 20, 1997, to be terminated July 1, 1997.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PacifiCorp

[Docket No. ER97–3639–000]

Take notice that on July 7, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with Engage Energy US, L.P., K N Marketing, Inc. and NorAm Energy Services, Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Greenwich Energy Partners, L.P.

[Docket No. ER97–3640–000]

Take notice that on July 7, 1997, Greenwich Energy Partners, L.P. gave notice that effective the 30th day of June, 1997, Rate Schedule FERC No. 1, effective date December 20, 1995 and filed with the Federal Energy Regulatory Commission by Greenwich Energy Partners, L.P., is to be canceled.

Greenwich Energy Partners, L.P. has no customers under this rate schedule, therefore, no parties have been served with this notice of proposed cancellation.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northern Indiana Public Service Company

[Docket No. ER97–3641–000]

Take notice that on July 8, 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 New York State Electric & Gas Corporation.

Service Company and New York State Electric & Gas Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to New York State Electric & Gas Corporation 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 June 16, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northern Indiana Public Service Company

[Docket No. ER97–3642–000]

Take notice that on July 8, 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 Engage Energy US, L.P.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Engage Energy US, L.P., 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 June 8, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. MDU Resources Group, Inc.

[Docket No. ES97–38–000]

Take notice that on July 14, 1997, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an Order (a) authorizing the issuance of up to $60,000,000 worth of Common Stock, par value $3.33 (the Common Stock), and (b) exempting the Applicant from the competitive bidding requirements and the negotiated placement requirements of the Act if Common Stock is issued directly to a seller or sellers of a business and/or its assets as consideration for the acquisition of such business and/or assets.

The securities are proposed to be issued from time to time over a two-year period.

Comment date: August 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. El Paso Electric Company

[Docket No. ES97–39–000]

Take notice that on July 17, 1997, El Paso Electric Company (El Paso) filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to enter into a Reimbursement Agreement and engage in related transactions for the purpose of refinancing irrevocable letters of credit that provide credit enhancement for pollution control bonds that were issued in 1985 to finance or refinance El Paso's interests in pollution control equipment and solid waste disposal facilities at the Palo Verde Nuclear Generating Station and the Four Corners Generating Station.

Comment date: August 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Kansas City Power & Light Company

[Docket No. OA97–636–000]

Take notice that on July 11, 1997, Kansas City Power & Light Company (KCP&L), filed a revised open-access tariff required to conform KCP&L's open-access tariff with Order No. 888–A. In accordance with Order No. 888–A, KCP&L proposes an effective date of May 13, 1997 for the revised tariff.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cleveland Electric Illuminating Company and Toledo Edison Company

[Docket No. OA97–637–000]

Take notice that The Cleveland Electric Illuminating Company and The Toledo Edison Company on July 11, 1997, tendered for filing a Compliance Tariff to comply with the Commission's Order No. 888-A Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, Docket Nos. RM95–8–001 and RM94–7–002, issued March 4, 1997.

Copies of the compliance filing were served upon all current customers under the Companies' Open Access Transmission Tariff, the Public Utilities Commission of Ohio and all parties to the proceeding in Docket Nos. OA96–204–000 and ER97–529–000 (consolidated).

Comment date: August 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Idaho Power Company

[Docket No. OA97–638–000]

Take notice that Idaho Power Company, on July 11, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a copy of its proposed Idaho Power Company Open Access Transmission Tariff, Original Volume No. 5—First Revised.

Copies of this filing were supplied to the Idaho Public Utility Commission, the Public Utility Commission of Oregon, the Wyoming Public Utility Commission, the Nevada Public Utility Commission, and all entitles now receiving service under the existing Tariff.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Louisiana Electric Company, Inc.

[Docket No. OA97–639–000]

Take notice that on July 11, 1997, Central Louisiana Electric Company (CLECO) submitted for filing its proposed conforming pro forma Open Access Transmission Tariff reflecting all of the revisions and clarifications in Order No. 888-A, as contained in the Appendix B of that Order. CLECO's filing is available for public inspection at its offices in Pineville, Louisiana.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Citizens Utilities Company

[Docket No. OA97–643–000]

Take notice that on July 14, 1997, Citizens Utilities Company (Citizens) tendered for filing a further revised Open Access Transmission Tariff applicable to its Vermont Electric Division.

Citizens states that this tariff is being filed in compliance with the Commission's Order No. 888–A issued on March 4, 1997 in Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95–8–001 and RM94–7–002, and adopts the changes made to the pro forma tariff as required by the Commission on rehearing.

Citizens states that it served copies of this filing on all affected state commissions and customers, as well as on certain other interested parties.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Wisconsin Power and Light Company

[Docket No. OA97–647–000]

Take notice that on July 14, 1997, Wisconsin Power and Light Company (WP&L) tendered its Pro Forma Open Access Transmission Tariff Compliance Filing required by the Commission's Order No. 888–A.

WP&L has modified its tariff filed in Docket No. OA96–20–000 to include the changes required by Order No. 888–A, modified its energy imbalance provisions in Schedule 4, and decreased its annual transmission revenue requirement in Attachment H of the tariff.

WP&L requests waiver of the Commission's notice requirements to permit an effective date of May 13, 1997. A copy of this filing has been served upon the Public Service Commission of Wisconsin and the Illinois Commerce Commission.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Consumers Energy Company

[Docket No. OA97–648–000]

Take notice that on July 14, 1997, Consumers Energy Company (Consumers) tendered for filing a Compliance Open Access Transmission Tariff in accordance with the requirements of the Federal Energy Regulatory Commission's Order No. 888–A. A copy of the filing was served on each person designated on the official service list maintained by the Commission Secretary's Office in Consumers' Docket No. OA96–77–000.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Northern Indiana Public Service Company

[Docket No. OA97–651–000]

Take notice that on July 14, 1997, Northern Indiana Public Service Company tendered for filing changes to its Open-Access Transmission Tariff to reflect changes in the Commission's Pro Forma tariffs in Order No. 888–A, Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 78 FERC ¶ 61,220, 62 Fed Reg 12274 (March 14, 1997).

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Duke Energy Corporation

[Docket No. OA97–654–000]

Take notice that on July 14, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Pro Forma Open Access Transmission Tariff in compliance with Order No. 888–A (Compliance Tariff). Duke's Compliance Tariff contains a revised Attachment D (Methodology for Completing a System Impact Study) as well as modifications designed to reflect Duke's corporate restructuring.

Copies of this filing were served on the parties of record in Docket No. OA96–46–000, all wholesale transmission customers and affected state commissions, via first class mail.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Public Service Company of New Mexico

[Docket No. OA97–655–000]

Take notice that, on July 14, 1997, Public Service Company of New Mexico (PNM) submitted its revised open access transmission service tariff in compliance with Order No. 888–A of the Federal Energy Regulatory Commission. Copies of PNM's filing have been posted and are available for inspection in PNM's office in Albuquerque, New Mexico. This filing is also available in the Open Access Tariff Filings directory of the FERC Electric Power Data Bulletin Board.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Mid-Continent Area Power Pool

[Docket No. OA97–658–000]

Take notice that on July 14, 1997, the Mid-Continent Area Power Pool, in compliance with the Federal Energy Regulatory Commission's (Commission) Order No. 888–A, filed on behalf of its Members that are public utilities under Section 201(e) of the Federal Power Act a revised Schedule F: Transmission Tariff for Coordination Transactions.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Central Maine Power Company

[Docket No. OA97–659–000]

Take notice that on July 14, 1997, Central Maine Power Company (Central Maine) tendered for filing pursuant to Sections 205 and 206 of the Federal Power Act, (16 U.S.C. §§ 791, et. seq.), Part 35 of the Federal Energy Regulatory Commission's Regulations, (18 CFR Part 35), and FERC Order Nos. 888 and 888–A, a revised open-access transmission tariff. Central Maine requests that the Commission allow the revised tariff to become effective on May 13, 1997 to comport with Order No. 888–A.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Illinois Power Company

[Docket No. OA97–660–000]

Take notice that on July 14, 1997, Illinois Power Company (Illinois Power) tendered for filing its Open Access Transmission Tariff (Tariff). Illinois Power requests an effective date consistent with Order No. 888–A.

The purpose of this filing is to comply with the Commission's requirements set forth in Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888-A, Docket Nos. RM95–8–001 and RM94–7–002, 78 FERC ¶ 61,220, FERC Regulations Preambles ¶ 31,048 issued on March 4, 1997. Illinois Power's Tariff conforms with the Pro Forma Open Access Transmission Tariff set forth by the Commission in Appendix B of Order No. 888-A.

Illinois Power states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Southern Company Services, Inc.

[Docket No. OA97–661–000]

Take notice that on July 14, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted Southern Companies Open Access Transmission Tariff, which has been revised to comply with the Commission's Order No. 888-A.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Rochester Gas and Electric Corporation

[Docket No. OA97–662–000]

Take notice that on July 14, 1997, Rochester Gas and Electric Corporation (RG&E) tendered for filing revised tariff sheets to its open access transmission tariff in compliance with Order No. 888-A.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Louisville Gas and Electric Company

[Docket No. OA97–663–000]

Take notice that on July 14, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing of its Open Access Transmission Tariff in compliance with the Commission's directive in Order No. 888A.

Comment date: August 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. San Diego Gas & Electric Company

[Docket No. OA97–664–000]

Take notice that on July 14, 1997, San Diego Gas & Electric Company (SDG&E) tendered for filing an open access transmission tariff pursuant to 18 CFR 35.28 (c).

Copies of this filing have been served upon the California Public Utilities Commission, and all other interested parties.

Comment date: August 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. 97–20463 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9179–002]

Wayne J. Krieger; Notice of Availability of Environmental Assessment

July 29, 1997.

In accordance with the National Environmental Policy Act of 1960 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR 380 (Order 486, 52 F.R. 47897), the Commission's office of Hydropower Licensing has reviewed an exemption surrender application for the Skyview Project, No. 9179–002. The Skyview Project is located on an unnamed tributary of Coy Creek in Curry County, Oregon. The exemptee is applying for a surrender of the exemption due to chronic generator problems that are uneconomical to repair. The EA finds that approving the application 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 Commission's Reference and Information Center, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20426 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

July 29, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-Project Use of Project Lands and Waters.

b. Project Name and No: Catawba-Wateree Project, FERC Project No. 2232–346.

c. Date Filed: May 30, 1997.

d. Applicant: Duke Power Company.

e. Location: Iredell County, North Carolina, The Harbour Subdivision on Lake Norman near Mooresville.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006, (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

h. FERC Contact: Brian Romanek, (202) 219–3076.

i. Comment Date: September 22, 1997.

j. Description of the filing: Duke Power Company proposes to grant Crescent Resources, Inc., a permit to excavate an approximate 0.69 acre area at the Harbour Subdivision to improve water depth for boat access. About 7,500 cubic yards of alignment material would be removed.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20421 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

July 29, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 6879–019.

c. Dates Filed: March 8, 1995 and July 8, 1997.

d. Applicant: Southeastern Hydro-Power, Inc.

e. Name of Project: W. Kerr Scott Project.

f. Location: On the Yadkin River in Wilkes County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Charles Mierek, Southeastern Hydro-Power, Inc., 5250 Clifton-Glendale Road, Spartanburg, SC 29307–4618, (864) 579–4405.

i. FERC Contact: Paul Shannon, (202) 219–2866.

j. Comment Date: September 12, 1997.

k. Description of Filings: Southeastern Hydro-Power, Inc. filed an application to modify the authorized configuration of the W. Kerr Scott Project and amend the project's license. The licensee proposes to install two Francis turbines instead of one Kaplan turbine, change the location of the powerhouse from the right bank of the river to the left bank (looking downstream), delete license articles 46 (requiring an instream flow study) and 47 (maintaining an interim minimum flow below the W. Kerr Scott Dam), and replace article 48 with another article that addresses fishery resources.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Projects, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–20422 Filed 8–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 29, 1997, 62 FR 40520.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 30, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to Items CAG–6 and PC–3 on Agenda scheduled for the July 30, 1997 meeting.

Item No.: Docket No. and Company

CAG–6

RP97–319–000, Williams Natural Gas Company

RP97–173–000, Carnegie Interstate Pipeline Company

PC–3:

CP97–238–000; Maritimes and Northeast Pipeline, L.L.C. and Portland Natural Gas Transmission System

Lois D. Cashell,

Secretary.

[FR Doc. 97–20554 Filed 7–31–97; 11:20 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5868–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Preauthorization of a CERCLA Response Action and the Claim for CERCLA Response

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Application for Preauthorization of a

CERCLA Response Action" and the "Claim for CERCLA Response Action"; EPA ICR No. 1304; OMB Control No. 2050–0106; expiring on January 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 1, 1997.

ADDRESSES: Copies of ICR are available by mail, or electronically via request to e-mail address below.

Seth Bruckner, Attorney/Advisor, U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, 401 M Street, SW (5204G), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Seth Bruckner, Attorney/Advisor; Phone: (703) 603–8766; Fax: (703) 603–9100; E–MAIL: BRUCKNER.SETH@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are those which are eligible to submit a claim pursuant to sections 111(a)(2) or 122(b)(1) of CERCLA.

Title: "Application for Preauthorization of a CERCLA Response Action" and the "Claim for CERCLA Response Action" (OMB Control No. 2050–0106; EPA ICR No. 1304.) expiring 1/31/98.

Abstract: This statement supports the request for renewal of the information collection requirements contained in EPA's final rule "Response Claims Procedures for the Hazardous Substance Superfund" (40 CFR part 307), hereinafter referred to as the RCP. The RCP was promulgated on January 21, 1993, and the ICR for this rule needs to be renewed. The information collection requirements under the RCP will provide the information necessary to fulfill the statutory requirements of section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Under section 111 (a) (2) of CERCLA, claimants are authorized to be reimbursed from the Hazardous Substance Superfund (the Fund) for necessary response costs incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR part 300). In addition, section 122(b)(1) of CERCLA provides the President (EPA, by delegation under Executive Order (E.O.) 12580) with the discretionary authority to enter into agreements with potentially responsible parties (PRPs), whereby the PRPs will perform a preauthorized phase of a response action in return for reimbursement of an agreed-on portion of response costs from the Fund (i.e., a "mixed-funding" agreement).

Section 112(b)(1) of CERCLA authorizes EPA (as delegated by E.O. 12580) to prescribe the appropriate forms and procedures for filing response claims against the Fund, including a provision requiring the claimant to make a sworn verification of the claim to the best of his/her knowledge. EPA has promulgated the RCP pursuant to the section 112 authority.

Under the RCP and pursuant to sections 111(a)(2) and 122(b)(1) of CERCLA, individuals, private entities, and potentially responsible parties (PRPs) (including States and political subdivisions) are eligible to submit claims against the Fund for reimbursement of response costs. As specified by section 111(a)(2) of CERCLA and section 300.700(d) of the NCP, all proposed response actions must be approved in advance by EPA through the preauthorization process in order for a subsequent claim to be awarded. Applicants may obtain preauthorization from EPA for proposed response actions by completing and submitting the "Application for Preauthorization of a CERCLA Response Action" (EPA Form 2075–3). EPA will review and evaluate completed applications and will respond in writing to applicants within approximately 45 days of receipt of a completed application. Once the Agency's review has been completed, EPA will develop a Preauthorization Decision Document (PDD). The PDD will establish a record of the Agency's decision regarding preauthorization and will contain the terms and conditions that must be satisfied for the applicant to be reimbursed from the Fund.

After an applicant has obtained preauthorization from EPA and has completed the preauthorized response action (or a preauthorized phase of a response action), he/she may submit a claim for reimbursement of the resultant response costs. In order to file a claim, the claimant must complete and submit to EPA the "Claim for CERCLA Response Action" (EPA Form 2075-41. EPA will review and evaluate the information contained on the completed claim form and will make a determination on whether to award or deny the claim, in whole or in part.

The application for preauthorization and the claim form may be obtained from any of the EPA Regional Offices. Completed applications for preauthorization and claim forms will be submitted to the appropriate EPA Regional Office for review. The EPA Regional Office will review and evaluate the application for preauthorization and the claim form in coordination with the Hazardous Site Control Division, the Office of the General Counsel, the Office of Enforcement and Compliance Assurance, and other offices, as necessary. Both forms will be evaluated according to the criteria set forth in the RCP. The information contained on the application and the claim form will be retained in the EPA Regional Office for three years after the completion of a project and will be available (if not deemed confidential), upon request, to the public through the public docket in accordance with the Freedom of Information Act.

An agency may not conduct or sponsor, and a person is not required 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.

EPA would like to solicit comments 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 whoa re 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.

Burden Statement: Based on its previous experience with the RCP, EPA estimates that five preauthorization requests will be submitted annually with an average of 258 workhours per request. With regard to claims applications, it is estimated that 12 will be submitted annually with an average of 42 work hours per claim. Once claims are awarded, claimants will have to maintain records for 10 years. Records maintenance will be performed by 10 claimants annually with an average of 15 hours per activity. The total annual cost for respondents will be $107,650.

The bottom line burden hours for completing the preauthorization application, the claim form, and maintaining necessary records is an

average of 317 hours. The total annual average burden for all respondents is 1,968 hours. The total annual average cost for all respondents is $107,650. The bottom line burden hours for EPA to review a preauthorization application and a claim is 240 hours. The total annual average burden for EPA is 3,520 hours. The total annual average cost for EPA is $90,182.

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 purpose 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.

Dated: July 29, 1992.

Steven D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–20473 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5868–1]

Risk Assessment and Risk Management Commission

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under section 303 of the clean Air Act Amendments of 1990, will cease to exist on August 29, 1997.

The Commission was formed to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human effects which may result from exposure to hazardous substances.

The Commission has issued a two-volume report. The first volume focuses on out Environmental Health Risk Management Framework and its implementation. This publication has been prepared for regulatory authorities and others who may participate in the risk management process as risk managers or stakeholders. Volume 2 addresses many other issues related to health and environmental risk-based decisions, including recommendations for specific federal regulatory programs and agencies.

Copies of the report can be obtained at the Riskworld website: http://www.riskworld.com. A printed copy of the report can be obtained from the Government Printing Office. The order desk phone number is 202–512–1800. Volume One: Framework for Environmental Health Risk Management, Stock Number 055–000–00567–2, price $6.00. Volume Two: Risk Assessment and Risk Management and Risk Management in Regulatory Decision-Making, Stock Number 055–000–00568–1, price $19.00. There is an additional 25% charge for foreign orders.

Dated: July 23, 1997

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 97–20474 Filed 8–1–97; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 29]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review; Comment request.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved collection described below. A request for public comments was published in 62 FR, No. 88, 24926, May 7, 1997. No comments were received.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments due on or before September 3, 1997.

OMB Number: 3048–0003.

Title and Form Number: U.S. Small Business Administration, Export-Import Bank of the United States, Joint Application for Working Capital Guarantee, EIB–SBA Form 84–1.

Type of Review: Revision of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with information necessary to determine eligibility for the Working Capital Guarantee Program.

Affected Public: Business or other for-profit—Not-for-profit institutions—Farms.

Respondents: Entities involved in the export of U.S. goods and services, including exporters, banks, and other non-financial lending institutions that act as facilitators.

Estimated Annual Respondents: 600.

Estimated Time per Respondent: 2 hours.

Estimated Annual Burden: 1,200 hours.

Frequency of Response: When applying for a guarantee.

ADDRESSES: Copies of these submissions may be obtained from Debbie Ambrose, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC., (202) 565–3313.

Comments and recommendations concerning the submissions should be sent to OMB Desk Officer, Victoria Wassmer, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, DC. 20503, (202) 395–5871.

Dated: July 30, 1997.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 97–20456 Filed 8–1–97; 8:45 am]

BILLING CODE 6690–01–M

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. The application also will 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 August 29, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Northside Banking Corporation, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Northside Bank of Tampa, Tampa, Florida.

Board of Governors of the Federal Reserve System, July 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–20465 Filed 8-1-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 962–3210]

Global World Media Corporation; Sean Shayan; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 3, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Joel Winston, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3153.

Michelle Rusk, Federal Trade Commission, S–466, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3148.

Nancy Warder, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3048.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for July 29, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Global World Media Corporation ("GWMC"), the marketer of Herbal Ecstacy or Ecstacy ("Ecstacy"), and its owner, Sean Shayan [hereinafter sometimes referred to as respondents].

The proposed consent order has been placed on the public record for sixty (60) days for reception of public comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter concerns safety claims respondents made in advertising for Ecstacy, a dietary supplement that respondents promoted as a natural "high" and expressly likened to the illegal street drug MDMA. More specifically, the complaint alleges that respondents represented that Ecstacy, when taken in the recommended doses or other reasonably foreseeable amounts, is absolutely safe and has no side effects. The complaint explains that Ecstacy contains a botanical source of ephedrine alkaloids, which can have dangerous effects on the nervous system and heart. Thus, according to the complaint, the claim that Ecstacy is safe and side effect free is both false and unsubstantiated.

In addition, the complaint charges that respondents represented in their advertising for Ecstacy, including in ads that ran on cable programming stations with substantial youth audiences, such as *Nickelodeon* and *MTV*, that Ecstacy is a safe alternative to illegal drugs to produce euphoric, psychotropic (mind-altering), or sexual enhancement effects, but failed to disclose the health and safety risks of using the product. According to the complaint the undisclosed facts would be material to consumers and, therefore, respondents' omission of the facts about the health and safety risks of Ecstacy in their advertising is alleged to be a deceptive practice.

Finally, the complaint challenges an endorsement of Ecstacy's safety and lack of side effects contained in respondents' advertising and attributed to a Dr. Steven Jonson of Tel Aviv, Israel. According to the complaint, the endorsement is false because Dr. Jonson is a fictitious person.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits (1) claims that Ecstacy or any other food, drug, or dietary supplement is safe or will cause no side effects; or (2) any other safety or

side effects claims, unless the claim is true and substantiated by scientific evidence.

Part II prohibits respondents from making any representation for any food, drug, or dietary supplement that contains ephedrine alkaloids that consumers can appropriately take such product in an amount that exceeds the level established by any regulation of the Food and Drug Administration ("FDA") for ephedrine alkaloids or any other ingredient in the product.

Part III requires the following clear and prominent disclosure in all future advertising and labeling of, and all consumer communications concerning, any ephedrine-alkaloid-containing product sold by respondents:

Warning: This product contains ephedrine which can have dangerous effects on the central nervous system and heart and could result in serious injury. Risk of injury increases with dose.

Under Part III, if the product is subject to an FDA rule or regulation that requires a labeling warning, that warning is required in labeling in lieu of the warning set forth above.

Part IV prohibits respondents from assisting others, including by selling product to them, when respondents have reason to believe that they are deceptively promoting respondents' ephedrine-containing products.

Part V prohibits misrepresentations about endorsements and testimonials.

Part VI prohibits respondents from directing to individuals under the age of twenty-one advertising and promotional activities for Ecstasy or any other ephedrine product marketed as an alternative to an illegal drug or for its euphoric, psychotropic, or sexual effects. Part VI includes examples of prohibited activity, including advertisements and promotions to audiences half or more under twenty-one.

Part VII requires the respondents to conduct and submit annual analyses of the levels of ephedrine alkaloids in any ephedrine-containing product that they sell for the next five (5) years.

Part VIII provides that nothing in the order permits the respondents to market any product (1) in a state where its sale has been banned; (2) in a manner that is inconsistent with state restrictions on its sale; or (3) in a way that is inconsistent with any applicable FDA rule or regulation.

Parts IX and X provide safe harbors for claims approved pursuant to FDA's regulation of the labeling for drugs and foods, respectively.

Part XI requires respondents to send a letter (Attachment A to the order) to anyone who provides the public with information about any of respondents' ephedrine-containing products. The letter advises the recipient that the disclosure required by Part III of the order must be made in all communications with consumers concerning any of respondents' ephedrine-containing products and that the only permissible statement about the dose of any such product is the information on the label. Part XII sets forth the record keeping and surveillance requirements with respect to Part XI.

Part XIII requires respondents to send a letter (Attachment B to the order) to distributors and resellers, including any person who purchases more than 100 units of any of respondents' ephedrine-containing products in any there (3) month period. The letter describes the Commission's action in this case and advises recipients to discontinue use of any promotional materials that do not comply with the order. Part XIV set forth the record keeping and surveillance requirements with respect to Part XIII.

The remaining parts of the order contain standard provisions pertaining to record keeping, compliance, sunsetting of the order, and similar matters.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–20450 Filed 8–1–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed 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 proposed 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.

Proposed Project: Reporting Requirements for the National Health Service Corps (NHSC) Non-Grant Sites—New—The National Health Service Corps (NHSC) is a component of the Bureau of Primary Health Care, Health Resources and Services Administration, Department of Health and Human Services. The mission of the NHSC is to assist in the development, recruitment, and retention of community-responsive, culturally competent, primary care providers to serve people in health professional shortage areas. The mission is implemented through assignment of personnel to 365 BPHC grant-supported health care sites and 312 sites receiving no grant support.

The NHSC is required to collect specific data from the sites to which NHSC providers are assigned. For grant-supported sites, this is accomplished through the Uniform Data System (UDS)(OMB No. 0915–0193). The UDS data are utilized to comply with congressionally mandated actions such as billing sites for the reimbursement of the cost of NHSC assignees and preparing reports for Congress. The UDS data are also utilized for evaluating the overall effectiveness of the NHSC to include appropriateness of NHSC assignee placements and expenditure of funds.

This request is to collect a subset of the UDS data from the non-grant supported sites in order to facilitate full compliance with the congressionally mandated billing and reporting requirements.

For this purpose a modified reporting tool with less burden has been developed for the non-grant supported sites which will collect information on services provided, populations served, staffing and utilization, finances, and managed care enrollment.

The following burden table was developed based on experience with

grant supported sites in completing the UDS:

Type of instrument	No. Of Respondents	Responses per Respondent	Hours per Response	Total Hour Burden
Modified UDS	312	1	5.6	1,747

The annual burden estimates shown above for the non-grant supported sites to complete the required six Tables will be refined through field testing at nine randomly selected sites.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857. Written comments should be received within 60 days of this Notice.

Dated: July 25, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–20453 Filed 8–1–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Collection; IHS Contract Health Service Report

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed data collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection project to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: 09–17–0002, "IHS Contract Health Service Report."

Type of Information Collection Request: 3-year reinstatement, with change, of previously approved information collection, 09–17–0002, "IHS Contract Health Service Report" which expire 09/30/97.

Form Number: IHS–843–1A, "Purchase-Delivery Order for Health Services."

Needs and Use of Information Collection: The Contract Health Service health care providers complete form IHS–843–1A to certify that they have performed the health services authorized by the IHS. The information is used to manage, administer, and plan for the provision of health services to eligible American Indian patients, process payments to providers, obtain program data, provide program statistics, and, serves as a legal document for health care services rendered.

Affected Public: Businesses or other for-profit, Individuals, not-for-profit institutions and State, local or Tribal Government.

Type of Respondents: Health care providers.

Table 1 below provides: Type(s) of Data Collection Instruments, Estimated Number of Respondents, Number of Responses per Respondent, Average Burden Hour per Response, and Total Annual Burden Hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average Burden hr per response*	Total annual burden hours
IHS–843–1A	9,115	43	393,416	0.05 (3 mins)	19,670
IDS**	21,797	1	21,797	0.05 (3 mins)	3,175

* For ease of understanding, burden hours are also provided in actual minutes.
** Inpatient Discharge Summary (IDS).

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information

Send your written comments, requests for more information on the proposed project, or requests to obtain a copy of the data collection instrument and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852, 1601, call non-toll free (301) 443–0461, fax (301) 443–1522, or send your E-mail requests, comments, and return address to: lhodahkw@.ihs.gov.

Comment Due Date

Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publications.

Dated: July 23, 1997.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 97–20432 Filed 8–1–97; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before September 3, 1997.

ADDRESSES: Commens and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, (703) 358–1943; (703) 358–2269 (fax).

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Sandhll Crane Harvest Questionnaire.

Approval Number: 1018–0023.

Service Form Number(s): 3–530 and 3–530A.

Description and use: The Migratory Bird Treaty Act (16 USC 703–711) and the Fish and Wildlife Act of 1956 (16 USC 742d) designates the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for the populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest of a temporal and geographic nature. Knowledge attained by determining harvest and harvest rate of cranes is used to regulate populations (to promulgate hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested flocks occur.

Beginning in 1960 and continuing to date, hunting seasons have been allowed for sandhill cranes in portions, or in all, of eight Midwestern States (Colorado, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming). A sandhill crane hunting season has been allowed in Kansas since 1993. The survey is used by the Fish and Wildlife Service to annual estimate the magnitude, the geographical and temporal distribution of sandhill crane harvest, and the portion it constitute of the total population. The information has been particularly useful in determining the effects on harvests of daily bag limits and changes in hunting dates and the area (counties) of States open to hunting. Based on information from the U.S. and Canadian surveys, hunting regulations can be adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels. Agencies participating in determining appropriate sandhill crane hunting regulations and making use of survey results include Department of the Interior, the Canadian Wildlife Service, State conservation agencies, and various private conservation organizations.

Service Form Number: 3–530 and 3–530A.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Estimated completion time: The reporting burden is estimated to average 5 minutes per respondent.

Number of respondents: Recent Service experience indicates that about 3,600 hunters will respond to the questionnaire each year. This is a decrease of about 4,400 respondents. The number of huntings contacted annually has decreased due to a change in sampling rates. A recent Service evaluation of sampling rates indicated that sampling rates could be reduced without compromising the utility of survey results for population management purposes.

Annual burden hours: 299.

Dated: July 28, 1997.

Robert G. Streeter,

Assistant Director, Refuges and Wildlife.

[FR Doc. 97–20414 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Management Plan and Associated Environmental Document

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive management plan (CMP) and an environmental document (environmental assessment or environmental impact statement) for the proposed Alameda National Wildlife Refuge, Alameda County, California. The Service is furnishing this notice in compliance with the Service CMP policy and the National Environmental Policy Act (NEPA) and its implementing regulations:

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Written comments should be received by September 12, 1997.

ADDRESSES: Address comments and requests for more information to: Charles J. Houghten, Chief, Planning Branch, ARW/RE, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181.

See the Supplementary Information Section for the electronic access and filing address.

SUPPLEMENTARY INFORMATION:

Background Information

The Service is beginning the planning/compliance process for the proposed Alameda National Wildlife Refuge (NWR). This process includes preparation of an environmental document to establish an approved refuge boundary and to evaluate management alternatives and preparation of a comprehensive

management plan. An open house will be held in Alameda on August 12, 1997. Issues and concerns expressed by the public at this meeting will be considered in the development of the CMP and NEPA documentation. The Service will inform interested parties of the open house through a "Planning Update," news release, and legal notice.

U.S. Fish and Wildlife Service policy is to have all lands within the National Wildlife Refuge System managed in accordance with an approved CMP. The CMP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The CMP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The 2,796-acre Naval Air Station Alameda was closed on April 25, 1997. The Service has requested 900 acres (525 acres of land and 375 acres of open water) for use as a wildlife refuge.

A CMP is needed because no formal, long-term management direction exists for managing the proposed Alameda NWR. Until the CMP is completed, Refuge management will be guided by official Refuge purposes; Executive Order 8104; Federal legislation regarding management of national wildlife refuges; and other legal, regulatory, and policy guidance.

Upon implementation, the CMP would apply only to Federal lands within the proposed boundaries of the Alameda NWR. Issues to be addressed in the plan include habitat management, public use, nuisance species management, and secondary uses, such as a limited-use airport. The plan will include the following topics:

(a) Population monitoring of the California least terns an endangered species;

(b) Wildlife habitat management including control of exotic vegetation; maintenance, habitat enhancement, and expansion of the existing California Least tern breeding site; installation of additional electric fence around tern nesting sites; and construction and maintenance of a chain-link perimeter fence to protect terns from terrestrial predators, human trespass, and other disturbance;

(c) Nuisance species management including the reduction of predator habitat and raptor perches immediately adjacent to the tern nesting site; trapping and removal of nonnative target animals;

(d) Public use including environmental education, docent-led tours, perimeter trail, interpretive signs and panels, viewing platform;

(e) Non-recreational uses, such as a limited-use private airport;

(f) Road access to pedestrians and bicycles;

(g) Law enforcement;

(h) Facilities management including existing bunkers and small supply buildings.

Alternatives that address the issues and management strategies associated with these topics will be included in the environmental document.

With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from CMP implementation on the proposed Alameda NWR. Comments already received are on record and need not be resubmitted.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR 1500–1509), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental document will be available in November 1997.

Electronic Access and Filing Address

You may submit comments by sending electronic mail (e-mail) to r1planning__guest@fws.gov (with "Alameda NWR" typed in the subject line). Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption.

Dated: July 28, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–20436 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for Construction of a Single Family Residence in Charlotte County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. E.J. Mouhot (Applicant), is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of one family of the threatened Florida scrub jay (FSJ), *Aphelocoma coerulescens coerulescens* for a period of six months. The proposed taking is incidental to construction of a single family home on about 0.69 acres (Project) in section 9, Township 40 South, Range 19 East, Charlotte County, Florida. The Applicant's Project is located within an existing (though incomplete) residential subdivision known as Manasota Gardens. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is as described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see

ADDRESSES) and should be received on or before September 3, 1997.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecosystem Office, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–832536 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office , (see ADDRESSES above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION:

Aphelocoma coerulescens coerulescens is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The FSJ is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the FSJ has been reduced by at least half in the last 100 years.

The status of FSJs in southwest Florida cannot accurately be estimated because no historical biological data exists with which to compare current species status. Based on the information identified in the Service's EA, the Service concludes that xeric habitats have been destroyed or degraded because of agricultural and urban uses, but FSJ responses to habitat disturbances are not well documented. However, based on existing soils data, the Service believes that much of the FSJ habitat that was once widespread along a narrow strip along coastal and riverine portions of Lee, Charlotte, and Sarasota counties has been lost. Because of the loss in habitat, the Service concludes that the number and distribution of FSJs has also declined.

FSJ families occupying the Project site and Manasota Gardens Subdivision are part of a larger complex of FSJ families that persist in southwest Sarasota and northwest Charlotte counties. FSJ inhabiting the Project site represent one of eight confirmed FSJ families that reside within the Manasota Gardens Subdivision. The status of FSJ within the Project site and adjacent areas is not secure over the long term. Recent biological studies of the FSJ population suggests that FSJ families within Manasota Gardens Subdivision will likely decline in the future due to decreasing habitat quality and availability because of habitat fragmentation associated with residential development. The Service, through consultation with other experts, believes that FSJs will decline, over time, in residential settings.

Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of two alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP. To compensate for the destruction of 0.59 acres of FSJ habitat and the take of one FSJ family, the Applicant has proposed to preserve 0.10 acres of scrub on the Project site. Further, clearing of vegetation and/or construction would not be allowed within 46 meters of any active FSJ nest during the nesting season, approximately March 1 to June 30 to comply with State law. Based on the Applicant's HCP, financial compensation was also offered to the local chapter of the Audubon Society to be used for FSJ monitoring in southern Sarasota County, but the Audubon Society rejected the offer. The Service did not specifically request other mitigation for the Project's impacts and no other compensation was offered by the Applicant.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has minimized impacts on the project site to the extent practicable.

4. Other than impacts to the threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: July 25, 1997.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 97–20433 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

[OR–015–97–1020–00: G7–0140]

Plan Amendment to the Warner Lakes Management Framework Plan

AGENCY: Bureau of Land Management (BLM) and Fish and Wildlife Service (USFWS), DOI.

ACTION: Notice of Intent, Plan Amendment to the Warner Lake Management Framework Plan and Jurisdictional Land Exchange with the Hart Mountain National Antelope Refuge.

SUMMARY: The Lakeview District (BLM) and Hart Mountain National Antelope

Refuge (USFWS) are initiating the planning process for a proposed plan amendment to the Warner Lakes Management Framework Plan (MFP, as amended) and jurisdictional land exchange with the Hart Mountain National Antelope Refuge. The proposed amendment/land exchange would transfer management jurisdiction of approximately 10,932 acres of BLM-administered lands to the USFWS and approximately 5,317 acres of USFWS-administered lands to the BLM.

DATES: This notice announces the beginning of the public scoping comment period on the proposal. Interested individuals, organizations, and other agencies are encouraged to provide written comments within 30 days of the date of this notice to the address below. Public meetings will be held on the following dates:

August 14, 1997, 7 p.m.—USFWS Office, Kietzke Plaza, 4600 Kietzke Lane, Building B, Room 111, Reno, Nevada

August 26, 1997, 7 p.m.—BLM, Lakeview District Office conference room, 1000 South Ninth Street, Lakeview, Oregon

August 27, 1997, 7 p.m.—Bend Welcome Center, 63085 North Highway 97, Bend, Oregon.

SUPPLEMENTARY INFORMATION: The proposed action consists of transferring management jurisdiction of approximately 10,932 of BLM-administered lands to the USFWS and approximately 5,317 acres of USFWS-administered lands to BLM. The lands proposed for transfer are located in south central Lake County, Oregon, and are legally described below:

Legal description	Acres of BLM transferred to USFWS	Acres of USFWS transferred to BLM
T. 39S, R. 27E, Secs. 2, 10, and 11	0	480
T. 38S, R. 26E, Secs. 1–4, 5, 6, and 8–16	5,169	134
T. 38S, R. 27E, Secs. 3–6, 12–14, 26, 35 and 36	2,377	1,280
T. 37S, R. 25E, Sec. 30	0	168
T. 37S, R. 24E, Secs. 1, 2, and 12	793	0
T. 36S, R. 24E, Secs. 8, 17–19, and 36	38	945
T. 36S, R. 28E, Secs. 6 and 8	0	360
T. 35S, R. 25E, Secs. 1, 10, 11, 15, 20, 21, 29, and 32	182	624
T. 34S, R. 28E, Secs. 5 and 6	320	0
T. 34S, R. 26E, Secs. 2, 10, 11, 20, 28, 30, and 31	6	604
T. 34S, R. 25E, Secs. 36	302	0
T. 32S, R. 26E, Secs. 24, 25, and 35	320	29
T. 32S, R. 27E, Secs. 3, 9, 17–19	1,425	650
Totals	10,932	5,317

A map showing the lands proposed for jurisdictional transfer can be viewed at the BLM or USFWS offices listed below.

An integrated planning and National Environmental Policy Act (NEPA) document will be prepared in accordance with applicable planning and NEPA regulations which will evaluate the potential impacts of the jurisdictional land transfer. USFWS lands located along the western boundary of the Hart Mountain National Antelope Refuge transferred to the BLM which fall within the boundary of the Warner Wetlands Areas of Critical Environmental Concern (ACEC) would be managed in accordance with the Warner Lakes Plan Amendment for Wetlands and Associated Uplands (1989), the Warner Wetlands ACEC Management Plan (1990), and subsequent activity level management plans (1990). Isolated parcels of USFWS land location south of the refuge (i.e. Shirk Ranch) transferred to the BLM would be managed in accordance with the Warner Lakes MFP (1983) and Lakeview Grazing Management Final Environmental Impact Statement/ Record of Decision (1982). Additional details of the related, but separate ongoing effort to develop an allotment management plan and environmental impact statement for the Beaty Butte allotment (0600) located south and east of the refuge in southeastern Lake County and southwestern Harney County, Oregon (see **Federal Register,** Vol 61, No. 246). All BLM lands transferred to the USFWS would be managed in accordance with the Hart Mountain National Antelope Refuge Comprehensive Management Plan Final Environmental Impact Statement and Record of Decision (1994).

Currently, three preliminary issues have been identified. These include: (1) How would the lands be managed once the transfer is completed? (2) how will the transfer improve management?, and (3) how would the transfer affect current uses (i.e. off-highway vehicle use, mineral management, and livestock grazing)?

Only two preliminary alternatives have been identified: (1) no action (i.e. do not conduct the transfer and continue current management), (2) transfer management jurisdiction of the described lands between the two agencies through formal land withdrawals, withdrawal revocations, or other title transfer, as appropriate.

At this time, individuals, organizations, agencies, and tribal government are invited to provide input on the preliminary issues, alternatives to be considered, and other aspects of the proposal that they feel should be addressed. All comments should be submitted in writing to the attention of Scott Florence, at the BLM address listed below within 30 days after this notice appears in the **Federal Register.** Comments, including the names and street addresses of respondents, will be available for public review during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the NEPA/planning document. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from businesses, organizations, and individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Persons wishing to be added to the mailing list for the plan amendment/

NEPA document may do so by contacting Paul Whitman at the BLM address below. The draft document is expected to be available for review during the fall of 1997 and will have a minimum 45-day comment period starting on the date the Notice of Availability appears in the **Federal Register**. The supporting planning record will be maintained at the BLM and USFWS Offices below and will be available for public inspection during normal business hours. Because of recent court rulings, it is very important that those interested in the proposed action participate during appropriate comment opportunities, so that any substantive comments are provided at a time when the BLM and USFWS can meaningfully consider them.

ADDRESSES: BLM, Lakeview District Office, P.O. Box 151, Lakeview, Oregon, 97630, Telephone: (541)–947–2177, or Hart Mountain National Antelope Refuge, Post Office Building, Lakeview, Oregon, 97630, Telephone: (541)–947–3315.

Dated: July 14, 1997.

Scott R. Florence,

Area Manager.

[FR Doc. 97–20446 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal to Develop the "Content Standard for Remote Sensing Swath Data" as a Federal Geographic Data Committee Standard

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a "Content Standard for Remote Sensing Swath Data." If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies collecting remotely sensed swath data directly or indirectly, through grants, partnerships, or contracts.

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

Title: Remote Sensing Swath Data Content Standard.

Date of Proposal: July 3, 1997.

Type of Standard: Content standard for remote sensing swath data.

Submitting Organization: National Aeronautics and Space Administration (NASA).

Point of Contact: Candace Carlisle, NASA Goddard Space Flight Center, Code 505, Greenbelt, MD 20771. Phone: (301) 614–5186.

Objectives

The primary objective of this proposed standard is to define the content for remote sensing swath data (subsequently called the swath data model), thereby providing a solid basis from which to develop interoperable data formats for this common form of remote sensing data. The data model shall define the minimal content requirements for a swath and the relationships among its individual components. It shall also discuss the treatment of optional supporting information within the swath model.

Project Scope

As stated in Executive Order 12906, dated April 13, 1994, the FGDC shall coordinate the Federal Government's development of the National Spatial Data Infrastructure (NSDI). The Executive Order is intended to strengthen and enhance the general policies described in OMB Circulars A–16 and A–119. The swath data model for remote sensing supports the development of the NSDI by providing a common framework for the organization of a wide range of remotely sensed data. The model will be particularly useful for data from scanning, profiling, staring, or push-broom type remote sensing instruments, whether they be ground based, shipboard, airborn, or spaceborne.

The Committee on Earth Observing Satellites (CEOS), an international standards body, has endorsed the development of data models for remotely sensed swath through its Working Group on Information Systems and Services (WGISS) Data Subgroup.

Justification/Benefit

In order to facilitate interoperability among agencies with remote sensing data holdings and member agencies of international remote sensing groups, participants must first be able to exchange information. Ideally, data from one organization should be easily useable by other organizations performing similar work. In practice, however, each organization has developed its own methods of encoding data that are generally not particularly compatible with those developed by other organizations. The unfortunate results are that data are generally not easily shared among these groups and that researchers who wish to use data from multiple sources find the task of reconciling the data particularly daunting. Clearly, it is in the interest of the entire remote sensing community that there be a common data encoding mechanism in use by many organizations. Before such an encoding mechanism can become widely accepted, however, each party must share a common conceptual model of the data in question. This is exactly the purpose of the swath data model or content standard. It will provide a common conceptual framework, within which the sharing of remote sensing swath data will become possible.

Development Approach

The data standardization and modeling are major research issues within the Earth Observing System Data and Information System (EOSDIS). The Earth Science Data and Information System (ESDIS) Project is responsible for EOSDIS and has already sponsored much preliminary research into these issues for remote sensing applications. Some early results of the research are presented in EOSDIS Version 0 FY92 Data Structures Report, an internal ESDIS report. Those early results have been further developed into data standards for the EOSDIS Core System (ECS) through soliciting input and comments from scientists around the world and from EOSDIS's Data Model Working Group. As one of the efforts to publicize the EOSDIS data standards and solicit comments, NASA plans to have a software vendor workshop on EOSDIS data standards during this year. The proposed FGDC content standard for remotely sensed swath data will based on the ECS swath data standard.

Related Standards

The proposed standard will be based on the NASA EOSDIS standards for remote sensing swath data. The NASA standard specifies the minimal content requirements for a swath and the relationships among its individual components. Based on the standard, ESDIS project has developed an encoding mechanism and a set of software tools for EOSDIS.

The Spatial Data Transfer Standard (SDTS) deals with transferring geospatial data among computer systems. The Raster Profile of SDTS is remotely related to the proposed swath standard because the Raster Profile can also be used to deal with remote sensing data. However, two important factors distinct them. First SDTS Raster Profile is a transfer standard while the proposed swath standard is a content standard. Second, SDTS Raster Profile only deals with two-dimensional geocoded raster data while the swath standard handles one, two, or higher dimensional data in raw sensor geometry. No other current FGDC, national, or international standard addresses this important facet of sharing remote sensing swath data.

Development and Completion Schedule

Execution of the timeline below will begin immediately following approval of this proposal.

1. Set up review committee—within 4 weeks after approval of proposal.
2. Produce working draft of standard—within 6–8 weeks after committee impaneled.
3. Conduct committee review—during 4–6 weeks after completion of working draft.
4. Revise working draft—within 2 weeks after receipt of committee comments.
5. Submit draft to SWG—within 2 weeks of final committee approval.

The following steps will take place according to the timing specified by the FGDC review process.

6. Review revised draft (SWG).
7. Produce revised draft for public review (NASDA/ESDIS).
8. Conduct pubic review (FGDC).
9. Respond to public comments (NASDA/ESDIS).
10. Evaluate response to public comments (SWG).
11. Approve standard for endorsement (SWG).
12. Endorse standard (FGDC).

Resources Required

NASA/GSFC ESDIS Project will fund this project to develop the content standard for swath data.

Potential Participants

NASA, through its Mission to Planet Earth, is already bringing together many diverse groups within the remote sensing community. Through the continuing data standards work done for ESDIS, NASA has gained considerable insight into the requirements of these various groups. Other Federal agencies who produce a large amount of remote sensing data, such as NOAA, NIMA, and USGS, can also participate in the standard development. Participation of the commercial remote sensing community in the standard development is also welcomed. In addition, under the auspices of the CEOS WGISS, many national and international space agencies will have the opportunity to participate in the development of the swath data model. These agencies play major roles within the remote sensing community.

Other Target Authorization Bodies

This proposed standard is not currently targeted for consideration by any other authorizing bodies. FGDC will serve as the target authorization body. As the FDGC content data standard for remotely sensed swath data, it is expected that this proposed standard could be subsequently authorized by ANSI, ISO, CEOS, or other groups.

DATES: Comments must be received on or before September 1, 1997.

CONTACT AND ADDRESSES: Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-swth@www.fgdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 × 3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

Dated: July 25, 1997.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 97–20462 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1320–01; NM–8128; NM–8130; NM–11670]

Notice of Coal Action, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Record of Decision (ROD) for the Thermal Energy Preference Right Lease Applications (PRLA's) San Juan County, New Mexico.

SUMMARY: The PRLA process requires that ROD be made available to the public. The ROD is the document announcing the BLM's decision regarding PRLA commercial quantities determinations. This action establishes the availability of the ROD for Thermal Energy's PRLA's.

ADDRESSES: Copies of the ROD can be obtained at the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Dated: July 25, 1997.

Richard A. Whitley,

Acting State Director.

[FR Doc. 97–20512 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–97–1610–00: G7–0232]

Availability of Beaty Butte Allotment Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of Availability of Beaty Butte Allotment Management Plan and Draft Environmental Impact Statement (AMP/DEIS).

SUMMARY: The Lakeview District has analyzed the potential environmental impacts of a proposed AMP for the Beaty Butte Allotment (0600) in Lake and Harney Counties, Oregon. The proposed plan covers livestock grazing management activities on approximately 400,000 acres of public lands administered by the BLM.

DATES: This notice announces the opening of the public review period. Interested individuals, organizations, and other agencies are encouraged to provide written comments to the following address within 60 calendar days of the date the U.S. Environmental Protection Agency publishes its' Notice of Availability of the document in the **Federal Register** which is expected on or about August 15, 1997.

ADDRESSES: Scott Florence, Area Manager, Lakeview Resource Area, BLM, PO Box 151, Lakeview, OR 97630.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, native American tribes, agencies, and local governments with a known interest in the proposal have been sent a copy of the AMP/DEIS. Reading copies are also available at the Lake, Klamath, and Harney County, Oregon libraries, and at the Public Room, Oregon State Office, BLM, 1515 SW 5th, Portland, Oregon. Comments on the draft document will be considered in the preparation of the AMP/Final EIS. Because of recent court rulings, it is very important that those interested in the proposed action

participate during this comment opportuniy so that any substantive comments are provided at a time when the BLM can meaningfully consider them.

FOR FURTHER INFORMATION CONTACT: Richard W. Mayberry, Project Coordinator, at address above, or telephone (541) 947–2177. Copies of the document may also be requested by contacting Mr. Mayberry or Paul Whitman at this same telephone number.

Scott R. Florence,

Area Manager.

[FR Doc. 97–20445 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: general concurrence on a CALFED Bay-Delta Program watershed management plan; update from the fact finding BDAC Ecosystem Restoration Work Group and discussion on the independent scientific review of the CALFED Ecosystem Restoration Program Plan; an update on the activities of the Ecosystem Restoration program and the Ecosystem Roundtable subcommittee; an update from the fact BDAC Assurances Work Group; discussion on the detailed evaluation of the Phase II alternatives and comparison of several alternatives using an sample decision matrix; and other issues. The Ecosystem Roundtable (a subcommittee of the BDAC) will meet to discuss the following issues: an update on the type and number of proposals received as a result of the 1997 Category III Request for Proposals; the evaluation and selection process for the proposals; and future priorities and schedule for the Restoration Coordination Program. Interested persons may make oral statements to the BDAC or to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 a.m. to 5:00 p.m. on Thursday, September 4, 1997. The Ecosystem Roundtable will meet from 9:30 a.m. to 4:00 p.m. on Wednesday, August 20, 1997.

ADDRESSES: Bay-Delta Advisory Council will meet at the Berkeley Marina Marriott, 200 Marina Blvd., Berkeley, CA 94710; Phone 510–548–7920. The Ecosystem Roundtable will meet in Room 1131, 1416 Ninth Street, Sacramento, California.

CONTACT PERSON FOR MORE INFORMATION: For the BDAC meeting, contact Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. For the Ecosystem Roundtable meeting contact Kate Hansel, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a diability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problem. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and the developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, California 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 29, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–20434 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: Comments must be submitted on or before September 3, 1997, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities

(see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information found at 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, and 30 CFR part 773, Requirements for permits and permit processing. OSM is requesting a 3-year term of approval for these information collection activities.

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 number for these collections of information are 1029–0098 and 1029–0041, respectively.

As required under 5 CFR 1302.8(d), **Federal Register** notices soliciting comments on these collections of information were published on may 12, 1997 (62 FR 25970) for 30 CFR part 769, and on May 14, 1997 (62 FR 26552), for 30 CFR part 773. No comments were received from either notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations—30 CFR part 769.

OMB Control Number: 1029–0098.

Summary: This part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 130.

Title: Requirements for permits and permit processing, 30 CFR part 773.

OMB Control Number: 1029–0041.

Summary: The collections activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Responses: 450.

Total Annual Burden Hours: 2,765.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 201–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: July 29, 1997.

Richard G. Bryson,

Chief Division of Regulatory Support.

[FR Doc. 97–20399 Filed 8–1–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 C.F.R. § 50.7, and 42 U.S.C. § 9622(d)(2)(B), notice is hereby given that a proposed Fifth Partial Consent Decree in *United States* v. GSF Energy, L.L.C., Civil Action No. 97–5440 JGD, was lodged on July 23, 1997, with the United States District Court for the Central District of California. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act for cleanup and cost recovery at the Operating Industries, Inc. Superfund site in Monterey Park, California.

Pursuant to the Consent Decree, the settling parties, GSF Energy and Air Products and Chemicals Inc., will pay $1.762 million to resolve their liability for the performance of remedial actions at the Operating Industries site, and for reimbursement of costs incurred and to be incurred by the United States at the site. Work is ongoing at the site to perform the remedial actions by other parties who have settled in previous consent decrees for the same matters as this consent decree.

As provided in 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(d)(2)(B), the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *GSF Energy, L.L.C.*, D.J. Ref. 90–11–2–156I.

The proposed Consent Decree may be examined at the office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $11.00 for a copy of the consent decree (25 cents per page reproduction costs) payable to "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–20405 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Johnson Engineering, Inc. & Lee County School Board*, Civil No. 97–283–CIV–FTM–24D (M.D. Fla.), was lodged with the United States District Court for the Middle District of Florida on July 23, 1997. The proposed Consent Decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1344, resulting from the unauthorized discharge of fill material into wetlands located within

the approximately 19-acre Colonial Elementary School Site in the City of Fort Myers, Lee County, Florida. The defendant, Lee County School Board is alleged to have owned or controlled the Site and to have discharged unauthorized fill material or to have controlled, directed, or participated in unauthorized filling activities at the Site. The Lee County School Board has agreed to a proposed Consent Decree to settle its alleged violations of the Clean Water Act.

The proposed Consent Decree would require the Lee County School Board to pay a $7,500 civil penalty and to create approximately 2.1 acres of wetlands on-site in mitigation for those wetlands destroyed. The Decree would also permanently enjoin the Lee County School Board from committing future Clean Water Act violations at the Site.

The U.S. Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to S. Randall Humm, Trial Attorney, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986 and should refer to *United States* v. *Johnson Engineering, Inc. & Lee County School Board*, Civil No. 97–283–CIV–FTM–24D (M.D. Fla.), DJ# 90–5–1–6–626.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, 2301 First Street, Room 106, Fort Myers, Florida 33901.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–20408 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—APEX Medical Inc. and the East Development Group, Inc.

Notice is hereby given that, on July 11, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), APEX Medical, Inc., and the East Development Group, Inc. have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are APEX Medical, Inc., East Walpole, MA and the East Development Group, Inc., East Walpole, MA. The general area of planned activity is to design a miniature totally implantable blood pressure sensing and monitoring system for long term human implantation. Such a device would monitor blood pressure in conjunction with artificial hearts or drug infusion devices.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–20406 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993 Semiconductor Research Corporation

Notice is hereby given that, on February 5, 1997 and June 11, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Semiconductor Research Corporation ("SRC") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mentor Graphics Corporations, Wilsonville, OR has become a member of SRC; and Numerical Technologies, Inc., Sunnyvale, CA has become an Affiliate Member. Additionally, Alcoa, San Diego, CA; E–Systems, Inc., Dallas, TX; NORTEL, Ottawa, CANADA; Microelectronics & Computer Technology Corporation (MCC), Austin, TX; BTA Technology, Inc., Santa Clara, CA; Integrated Electronics Innovations, Inc., Cary, NC; and Solid State Systems, Inc., Santa Clara, CA are no longer members.

No other changes have been made in either the membership, corporate name, or planned activities of this group research project. Membership in the project remains open, and Semiconductor Research Corporation intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, the Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281). The last notification was filed with the Department on February 5, 1997.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–20407 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request a ninety-day emergency extension to a currently approved emergency extension for a revision of a currently approved collection; application for asylum and withholding of removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICRP utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance/approval in accordance with the Paperwork Reduction Act of 1995. Additionally, this notice will serve as the 60-day public notification for comments as required by the Paperwork Reduction Act of 1995. The new streamlined information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 3, 1997. Comments and questions about the emergency extension of this information collection should be forwarded to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Office, Room 10235, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved emergency extension for a revision of a currently approved collection

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* For I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary; Individuals or Households. The information collected is used by the INS and EOIR to access eligibility of persons applying for asylum and withholding of deportation.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at there and one half (3.16) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 252,800 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20423 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; employment eligibility verification.

The Department of Justice, Immigration and Naturalization Services (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by September 30, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington DC 20503. Comments regarding the emergency submission of this information collection may also be telefaxed to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until October 3, 1997. During the 60-day regular review all comments and suggestions, or question regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) 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;

(2) Evaluate the accuracy of the agencies of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) 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, other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–9. Programs Office, IIRIRA Implementation Team, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act (the Act), as amended by the Immigration Reform and Control, Act of 1986 (IRCA), which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 respondents at 9 minutes (.15) hours per response and

20,000,000 record keepers at 4 minutes (0.066) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management; Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20424 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; application for temporary protected status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by September 30, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submissions of this information collection may also be telefaxed to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until October 3, 1997. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–821. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information provided on this collection will be used by the INS to determine whether an applicant for Temporary Protected Status (TPS) meets the eligibility requirements. Such TPS benefits include employment authorization and relief from the threat of removal or deportation from the U.S. while in such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–20425 Filed 8–1–97; 8:45 am]

BILLING CODE 4410–18–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974: Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; Notice of New System of Records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Workload and Assignment Tracking System. The system is intended to provide a method for tracking workload and may be used to monitor performance of employees of the MSPB.

DATES: Comments must be received on or before September 3, 1997. This system of records becomes effective as proposed, without further notice, on October 3, 1997, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, N.W. Washington, D.C. 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: July 30, 1997.
Robert E. Taylor,
Clerk of the Board.

MSPB/Internal–5

SYSTEM NAME:

Workload and Assignment Tracking System.

SYSTEM LOCATION:

Information Resources Management Division, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who have written to MSPB on official business, including individuals who have written to the White House and Congressional offices and whose letters have been referred to MSPB for response.

b. MSPB employees who have been assigned responsibility for completing workload tasks of the kind recorded in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Information about the individual writing to MSPB, including personal information such as individual names, social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

b. Information concerning the nature of the assigned task, the dates of assignment, required completion and actual completion. The system may also contain notes on the performance of the task by the assignee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1204, and 1205.

PURPOSE:

These records are used for internal assignment and tracking of workload and may also be used to monitor the performance of MSPB employees on assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. to the Government Accounting Office in response to an official inquiry or investigation;

b. to the Department of Justice for use in litigation when:

(1) the Board, or any component thereof; or

(2) any employee of the Board in the employee's official capacity; or

(3) any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

c. in any proceeding before a court or adjudicative body before which the Board is authorized to appear, when:

(1) the Board, or any component thereof; or

(2) any employee of the Board in the employer's official capacity; or

(3) any employee of the Board in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case the agency determines that the disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

d. to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; and

e. in response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in electronic form on a Hewlett Packard mini-computer connected to a local area network and a wide area network serving all offices of the MSPB.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, and by automatically assigned control numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Automated records are protected from unauthorized access through password identification procedures and other system-based protecting methods.

RETENTION AND DISPOSAL:

Electronic records in this system may be maintained for a period of one year, and are then transferred to magnetic tape and maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER:

The Information Resources Management Division, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must fellow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORDS ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board, Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

RECORDS SOURCE CATEGORIES:

The sources of these records are:

a. the individual to whom the record pertains;

d. other individuals or organizations from whom the MSPB has received information.

[FR Doc. 97–20483 Filed 8–1–97; 8:45 am]
BILLING CODE 7400–01–M

NATIONAL INDIAN GAMING COMMISSION

Paperwork Reduction

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission is publishing this notice to comply with the requirements of the

Paperwork Reduction Act of 1995. The Paperwork Reduction Act of 1995 was enacted for the purpose of minimizing the paperwork burden on the public and, in particular, on the regulated community. The Paperwork Reduction Act of 1995 was also enacted to maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government. The National Indian Gaming Commission received clearance from the Office of Management and Budget for the collection of information necessary to implement the Indian Gaming Regulatory Act. The purpose of this notice is to inform the public that the National Indian Gaming Commission currently seeks renewal of this clearance.

DATES: Comments must be received by October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Copies of this information can be obtained from Cindy Altimus, National Indian Gaming Commission, 1441 L Street, NW, 9th Floor, Washington, DC 20005; Telephone 202/632–7003; Fax 202/632–7066 (these are not toll-free numbers).

ABSTRACT: The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq., 102 Stat. 2467, Pub. L. 100–497) (the Act) established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands. The Act establishes the National Indian Gaming Commission (NIGC, or the Commission) as an independent federal regulatory agency. 25 CFR part 514, in accordance with the Act, authorizes the National Indian Gaming Commission (the Commission) to establish a schedule of fees to be paid to the Commission by each Class II gaming operation regulated by the Act. Fees are computed using rates set by the Commission and the assessable gross revenues of each gaming operation. The total of all fees assessed annually cannot exceed $1,500,000. The required information is needed for the Commission to both set and adjust rates and to support the computations of fees paid by each gaming operation.

Respondents: Class II gaming operations.

Number of Respondents: 201.

Estimate of Burden: An average of 5 hours.

Estimated Total Annual Burden on Respondents: 1,005 hours. Send comments regarding the accuracy of the burden estimates, ways to minimize the burden or any other aspect of this collection of information to: Cindy Altimus, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Wsahington, DC 20005.

Tom Foley,

Vice Chairman, National Indian Gaming Commission.

[FR Doc. 97–20443 Filed 8–1–97; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 5–269, 50–270, and 50–287]

In the Matter of Duke Power Company (Oconee Nuclear Station Units 1, 2, and 3)

Exemption

I

Duke Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, for the Oconee Nuclear Station, Units 1, 2, and 3, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of three pressurized water reactors located at the licensee's site in Oconee County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) at subsection (a) of 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality accident monitoring system "using gamma-or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs." Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) requires licensees to have a means to quickly identify personnel who have received a dose of 10 rads or more. Subsection (b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) exempts Part 50 licensees (such as Oconee) from the requirements of paragraph (b). Subsection (d) states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

By letter dated February 4, 1997, as supplemented March 19, 1997, the licensee requested an exemption for all the Duke Power Company nuclear plants from the requirements of 10 CFR 70.24. The staff has reviewed the licensee's submittal, and documented its detailed review in a Safety Evaluation. The staff found that existing procedures and training, as well as design features and radiation monitoring instrumentation required by the Technical Specifications make an inadvertent criticality in special nuclear materials handling or storage at Oconee unlikely. The licensee has thus met the intent of 10 CFR 70.24(d) by the low probability of an inadvertent criticality in areas where fresh fuel could be present, by the licensee's adherence to General Design Criterion 63 regarding radiation monitoring, by maintenance of appropriate procedures, and by provisions for personnel training and evacuation.

III

Section 70.14 of 10 CFR, "Specific exemptions," states that

> The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 70.24(d) of 10 CFR states that

> Any licensee who believes that good cause exists why he should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such exemption.

Accordingly, the Commission has determined that good cause is present as defined in 10 CFR 70.24(d). The

Commission has further determined that, pursuant to 10 CFR 70.14, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The Commission hereby grants the licensee an exemption from the requirements of 10 CFR 70.24(a)(1), (2), and (3), on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (62 FR 40122).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20451 Filed 8–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

In the Matter of Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2)

Exemption

I

The Duke Power Company, et al. (the licensee) is the holder of Facility Operating License Nos. NPF–35 and NPF–52, for the Catawba Nuclear Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in York County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) at subsection (a) of 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, a criticality accident monitoring system "using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs." Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify the detection, sensitivity, and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) of 10 CFR 70.24 requires that the licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) requires licensees to have a means to quickly identify personnel who have received a dose of 10 rads or more. Subsection (b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) exempts Part 50 licensees (such as Catawba) from the requirements of paragraph (b). Subsection (d) states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

By letter dated February 4, 1997, as supplemented March 19, 1997, Duke Power Company requested an exemption for its two nuclear plants from the requirements of 10 CFR 70.24. The staff has reviewed the submittal in regard to Catawba, and documented its detailed review in a Safety Evaluation. The staff found that Catawba's existing procedures and design features make an inadvertent criticality in special nuclear materials handling or storage at Catawba unlikely. The licensee has thus met the intent of 10 CFR 70.24(a) (1), (2), and (3) by the low probability of an inadvertent criticality in areas where fresh fuel could be present, by the licensee's adherence to General Design Criterion 63 regarding radiation monitoring, and by provisions for personnel training and evacuation.

III

Section 70.14 of 10 CFR, "Specific exemptions," states that

> The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 70.24(d) of 10 CFR states that

> Any licensee who believes that good cause exists why he should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such exemption.

Accordingly, the Commission has determined that good cause is present as defined in 10 CFR 70.24(d). The Commission has further determined that, pursuant to 10 CFR 70.14, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Duke Power Company an exemption from the requirements of 10 CFR 70.24(a) (1), (2), and (3) for Catawba, Units 1 and 2, on the bases as stated in Section II above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (62 FR 40553).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of July 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–20452 Filed 8–1–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38882; File No. SR–CHX–97–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto by the Chicago Stock Exchange, Inc., Relating to a Specialist's De-Registration in an Issue

July 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 June 4, 1997, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on July 3, 1997, July 22, 1997, and July 28, 1997, filed Amendment Nos. 1, 2, and 3,

respectively,[1] to 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 proposes to amend Article XXX, Rule 1, Interpretation and Policy .01 of the CHX Rules, to change a policy of the Exchange's Committee on Specialist Assignment and Evaluation ("CSAE") relating to the time periods for which a co-specialist must trade a security before deregistering as the specialist for the security. This policy would be in effect for a one year pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's CSAE is responsible for, among other things, appointing specialists and co-specialists[2] and conducting deregistration proceedings in accordance with Article XXX of the Exchange's rules.[3] As described in existing Interpretation and Policy .01 of Rule 1 of Article XXX, seven circumstances may lead to the need for assignment or re-assignment of a security. One such circumstance is by specialist request.

Currently, the CSAE "will initiate a re-assignment proceeding if it believes that such action is called for."[4] Using this standard, the CSAE's current policy is to require a co-specialist to trade an issue awarded in competition[5] for a two year period, and to trade an issue awarded without competition for a six-month period, before permitting a co-specialist to deregister in the issue.

The CHX proposes to amend this policy for a one year pilot program. Specifically, the proposal would change the time periods for which a co-specialist must trade an issue before the CSAE will, in general, approve a co-specialist's request to deregister in an issue.[6] These time periods would vary depending on whether the issue was awarded in competition or without competition and whether another specialist will assume the responsibility to trade the issue.

Under the proposed rule change, for a security that was awarded to a co-specialist in competition, such co-specialist will be required to trade the security for one year before being able to deregister in the security if no other specialist will be assigned to the security after posting.[7] The two year time period currently in place for an intra-firm transfer of such issues (*i.e.*, transferring the issue to another co-specialist in the same specialist unit) will remain. For a security that was awarded to a co-specialist without competition, such co-specialist will be required to trade the security for a three month period before being able to deregister in the security if no other specialist will be assigned to the security after posting. The six month time period currently in place for an intra-firm transfer of such issues will remain.

Whether or not the security was awarded in competition, the effective date of a specialist's deregistration in an issue for which no specialist will be assigned after posting will be the first business day of each calendar quarter; provided, however, that the applicable time period for which a specialist is required to trade an issue must have been satisfied prior to such date.

Whether or not the security was awarded in competition, in general, the CSAE will require that order sending firms be given at least 15 days advance notice of a co-specialist's intention to de-register in the issue.

The Exchange believes that this new policy will encourage more specialists and co-specialists to become the specialist or co-specialist in additional securities. By reducing the current two year requirement to one year and the current six month requirement to three months, a specialist or co-specialist will reduce its risk and exposure that is attendant with registering as a specialist or co-specialist for a particular issue. The Exchange believes that the current two year and six month standards are too long—they are too burdensome and onerous on a specialist or co-specialist. Circumstances can unexpectedly change over a two year period. As a result, under the current policy, a specialist or co-specialist may be reluctant to apply to become a specialist in an issue. The Exchange believes that the new policy, as proposed, will more accurately balance the need for consistency and continuity with respect to the trading of an issue by a particular specialist against the need by a specialist to have the flexibility to de-register as the specialist for an unprofitable issue. As stated above, this will encourage specialists to apply to trade more issues. This, in turn, will increase the liquidity and depth of the market. For example, it might encourage a specialist to trade an issue in which no specialist is currently assigned.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[1] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated June 23, 1997 ("Amendment No. 1") and Letters from David T. Rusoff, Attorney, Foley & Lardner, to Heather Seidel, Attorney, Division of Market Regulation, Commission, dated July 16, 1997 ("Amendment No. 2") and July 21, 1997 ("Amendment No. 3").

[2] A specialist is a "unit" or organization which has registered as such with the Exchange under Article XXX, Rule 1. A co-specialist is an individual who has registered as such under Article XXX, Rule 1. *See* CHX Rules Article XXX, Rule 1, Interpretation and Policy .01.4(a).

[3] *See* CHX Rules Article IV, Rule 4.

[4] *See* CHX Rules Article XXX, Rule 1, Interpretation and Policy .01.2.

[5] In this context, "in competition" means that more than one specialist had applied to be the specialist in the issue.

[6] The Exchange stated its intention to have the new policy apply anytime there will not be another specialist assigned to the issue, such as if the security was to be returned to the cabinet, put in the cabinet for the first time, or traded by a lead primary market maker pursuant to CHX Rules Article XXXIV, Rule 3. *See* Amendment No. 2, supra note 1. Cabinet securities are those securities which the Board of Governors designates to be traded in the cabinet system because in the judgment of the Board such securities do not trade with sufficient frequency to warrant their retention in the specialist system. *See* CHX Rules Article XXVIII, Rule 6. For a more detailed explanation of the operation of the cabinet system, see CHX Rules Article XX, Rule 11.

[7] In this context, posting means that all specialists are put on notice that the security in question is available for reassignment. *See* CHX rules Article XXX, Rule 1. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Heather Seidel, Attorney, Market Regulation, Commission, on July 24, 1997.

[8] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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 reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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, 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 Room. 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–CHX–97–15 and should be submitted by August 25, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20410 Filed 8–1–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38875; File No. SR–Phlx–97–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Telemarketing Practices by Members and Member Organizations

July 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On July 21, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Rule 762, Telemarketing, which is substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act").[4]

The proposal also amends Rule 605, Advertising, Market Letters, Research Reports and Sales Literature, requiring telemarketing scripts to be retained for three years and to make the rule specifically applicable to foreign currency option participants and foreign currency option participants organizations as well as to members and member organizations.[5]

The text of the proposed rule change and Amendment No. 1 is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

Purpose

Under the Telemarketing Act, which became law in August 1994,[6] the Federal Trade Commission adopted detailed regulations ("FTC Rules")[7] to prohibit deceptive and abusive telemarketing acts and practices; the regulations became effective on December 31, 1995.[8] The FTC Rules, among other things, (i) Require the maintenance of "do-not-call" lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself or herself, the company he or she works for, and the purposes of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use negotiable instruments called "demand drafts."[9]

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Deborah Flynn, Attorney, Division of Market Regulation, SEC, dated July 14, 1997 ("Amendment No. 1"). In Amendment No. 1, the Phlx replaced all references to "participant" and "participant organization" in the proposal with "foreign currency option participant" and "foreign currency option participant organization" to clarify the applicability of the proposed rule.

[4] 15 U.S.C. §§ 6101–08.

[5] According to the Exchange, it will issue an Information Circular advising the membership of the new telemarketing rules upon their approval, and clarifying that abusive, annoying or harassing telemarketing calls by members, foreign currency option participants, member organizations and foreign currency option participant organizations or their associated persons are violative of Phlx Rules 707 and 762.

[6] *See* Telemarketing Act, *supra* note 4.

[7] 16 CFR 310.

[8] §§ 310.3–4 of FTC Rules.

[9] *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other

Continued

Under the telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.[10] The purpose of the proposed rule change is to add Phlx Rule 762 and to amend Phlx Rule 605 in response to the Commission's request that self-regulatory organizations ("SROs") promulgate rules substantially similar to applicable provisions of the FTC rules adopted pursuant to the Telemarketing Act

Time Limitations and Disclosure: The proposed rule change adds Rule 762 to prohibit, under proposed paragraph (a)(1) to Rule 762, a member, foreign currency option participant, or person associated with a member or foreign currency option participant organization from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location and to require, under proposed paragraph (a)(2) to Rule 762, such member, foreign currency option participant or person associated with a member or foreign currency option participant organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (a)(3) to Rule 762 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a)(1) and (a)(2) for telephone calls by any persons associated with a member or foreign currency option participant organization or other associated person acting at the direction of such persons for the purposes of maintaining and servicing existing customers assigned to or under the control of the associated persons, to certain categories of "existing customers." Proposed paragraph (a) also defines "existing customer" as a customer for whom the member or foreign currency option participant organization, or clearing broker or dealer on behalf of the member or foreign currency option participant organization, carries an account. Proposed subparagraph (a)(3)(i) exempts calls, by an associated person, to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to the associated person at the time of the transaction or deposit. Proposed subparagraph (a)(3)(ii) exempt calls, by an associated person, to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed subparagraph (a)(3)(iii) exempts telephone calls to a broker or dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the rule do not otherwise expressly or by implication impose on members or foreign currency options participants any additional requirements with respect to the relationship between a member or foreign currency option participant and a customer or between a person associated with a member or foreign currency option participant organization and a customer.

Do-Not-Call List: Proposed paragraph (b) to Rule 762 requires each member or foreign currency option participant organization that engages in telephone solicitation to market its products and services to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from a member or foreign currency option participant organization or its associated persons.

Demand Draft Authorization and Recordkeeping: Proposed paragraph (c) to Rule 762 prohibits members and foreign currency option participants or persons associated with a member or a foreign currency option participant organization from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account ("demand draft") without that person's express written authorization, which may include the customer's signature on the instrument, and to require the retention of such authorization for a period of three years. The proposal also states that this provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

Telemarketing Scripts: The proposed rule change also amends Phix Rule 605 and its accompanying commentary and supplementary material to include "telemarketing scripts" within its rules governing the issuance of advertisements, market letters, research reports and sales literature. Therefore, telemarketing scripts will be required to be retained for a period of three years. The Exchange also proposes to amend parts .02, .08 and .10 to the Exchange's Supplementary Information Regarding Rule 605, relating to Disclosure, Claims for Research and Identification of Sources, to clarify the applicability of these guidelines to foreign currency option participants and foreign currency option participant organizations.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[11] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the

securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A "demand draft" is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words "signature on file" or "signature pre-approved" in the location where the customer's signature normally appears.

[10] In response, the National Association of Securities Dealers ("NASD"), the Municipal Securities Rulemaking Board ("MSRB"), the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") have adopted rules to curb abusive telemarketing practices. *See* Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996), 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR–NASD–96–28); 38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (order approving File No. SR–MSRB–96–06); 38638 (May 14, 1997), 62 FR 27823 (May 21, 1997) (order approving File No. SR–NYSE–97–07); and 38724 (June 6, 1997), 62 FR 32390 (June 13, 1997) (order approving File No. SR–Amex–97–17).

The Commission has determined that the NASD Rule, the MSRB Rule, the NYSE Rule and the Amex Rule, together with the Exchange Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the remaining SROs to file similar proposals.

[11] 15 U.S.C. § 78f(b)(5).

mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.[12]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–18 and should be submitted by August 25, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[13] which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[14] The proposed rule change, as amended, is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, and members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the addition of Rule 762, prohibiting a member or foreign currency option participant or person associated with a member or foreign currency option participant organization from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member or foreign currency option participant or person associated with a member or foreign currency option participant organization may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and foreign currency option participant organizations from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the addition of Rule 762, requiring a member or foreign currency option participant or person associated with a member or foreign currency option participant organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, Rule 762 assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing securities. Moreover, by requiring the associated person to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission further believes that Rule 762, which creates exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of "existing customers" is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a minimally active relationship. In this regard, the Commission believes that Rule 762 achieves an appropriate balance between providing protection for the public and the members' and foreign currency option participants' interests in competing for customers.

The Commission believes that Rule 762, requiring that each member or foreign currency option participant organization maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member, foreign currency option participant organization or associated persons, is appropriate. By requiring members and foreign currency option participant organizations to maintain a do-not-call list, Rule 762 assists in the prevention of fraudulent and manipulative acts and practices, such as persistently calling investors who have expressed a desire to not receive telephone solicitations.

Moreover, the Commission believes that the provisions of Rule 762, requiring that a member, foreign currency option participant or person associated with a member or foreign currency option participant organization obtain from a customer, and maintain for three years, express written authorization when submitting for

[12] The Commission, however, received two comment letters on an NASD proposal (SR–NASD–96–28), which is substantially similar. *See* Letter from Brad N. Bernstein, Assistant Vice President and Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 ("Merrill Lynch Letter"), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 ("ICI Letter").

For a discussion of the letters and responses thereto, *see* Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR–NASD–96–28).

[13] 15 U.S.C. § 78f(b)(5).

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to misappropriate customers' funds. In addition, the Commission believes that by requiring a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to retain the authorization for three years, Rule 762 protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

The Commission believes that the amendment to Rule 605, requiring the retention of telemarketing scripts for a period of three years is appropriate. By requiring the retention of telemarketing scripts for three years, Rule 605 assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members, foreign currency option participant organizations and associated persons are not engaged in unacceptable telemarketing practices. Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' and foreign currency option participant organizations' interests in conducting legitimate telemarketing practices.

The Commission notes that the Exchange proposes to amend parts .02, .08 and .10 to its Supplementary Information Regarding Rule 605, relating to Disclosure, Claims for Research and Identification of Sources, to clarify the applicability of these guidelines to foreign currency option participants and foreign currency option participant organizations. The Commission believes that the Exchange's proposal to clarify that its guidelines apply to foreign currency option participants and foreign currency option participant organizations is reasonable.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the Phlx's rules provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[15]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–97–18), including Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–20411 Filed 8–1–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38881; File No. SR–Phlx–97–21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Wheel Removal and Assignment Areas

July 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organizations. On July 1, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On July 24, 1997, the Phlx submitted Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Floor Procedure Advice ("Advice") F–24, AUTO–X Contra-Party Participation (the "Wheel"), to: (1) Establish a procedure for the removal of Registered Options Traders ("ROTs") from the Wheel; and (2) extend the Wheel assignment area in certain circumstances. The Wheel is an automated mechanism for assigning floor traders (i.e. specialists and ROTs), on a rotating basis, as contra-side participants to AUTO–X orders. AUTO–X is the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") system,[5] which provides customers with automatic executions of eligible equity option and index option orders at displayed markets.

Currently, an ROT must be actively making markets to be on the Wheel, and an ROT must be present in his Wheel assignment area to participate in Wheel executions. The Exchange proposes to amend Advice F–24 to state that ROTs must sign-off the Wheel when leaving the Wheel assignment area for more than a brief interval, which means 5 minutes or less, or in matters of a dispute, the amount of time it takes to call in a Floor Official and inform him/her of the issue at hand.[6] If an ROT does

[15] 15 U.S.C. § 78f.

[16] 15 U.S.C. § 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, dated June 25, 1997 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended the proposal by: (1) Requiring the approval of the Options Committee, rather than two Floor Officials, to extend the Wheel assignment area beyond two contiguous quarter turrets; (2) deleting the requirement that a trade occur while a trader was away from the Wheel for more than a brief interval before the trader would be subject to removal and fines; and (3) clarifying several aspects of the proposal.

[4] *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division, SEC, dated July 22, 1997 ("Amendment No. 2"). In Amendment No. 2, the Phlx replaced the word "crowd" with the phrase "Wheel assignment area" in the text of the rule to clarify that the proposal requires the trader to be present in the Wheel assignment area, but not necessarily the trading crowd.

[5] AUTOM is an electronic order routing and delivery system for options orders.

[6] In Amendment No. 1, the Phlx clarified that a brief interval may exceed 5 minutes where an ROT

leave the Wheel assignment area for more than a brief interval, the ROT is subject to both removal from all Wheel participation for the remainder of the trading day and a fine in accordance with the established fine schedule.[7] The establishment of the fine schedule for violations of Advice F–24 requires the Exchange to enact a corresponding amendment to the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"), as proposed herein.[8] Specifically, violations will be subject to the following fine schedule, which will be implemented on a one year running calendar basis: 1st Occurence—Warning; 2nd Occurrence—$100.00; 3rd Occurrence—$250.00; 4th and Thereafter—Sanction is discretionary with Business Conduct Committee.

In addition to a fine, the ROT being removed from the Wheel would be responsible for any trades assigned to his/her account until the sign-off has been processed through the system. When removed from the Wheel in this manner, the ROT will be prohibited from signing back on to any Wheel for the remainder of the trading day.

The Exchange also proposes to extend the Wheel assignment area in certain circumstances. Currently, ROTs may elect to participate on the Wheel for any or all issues in which they maintain an ROT assignment, as long as those listed options are located within two contiguous quarter turrets of each other and the ROT is actively making markets in the specific issues. The Exchange proposes to permit an ROT to participate on Wheels that are not within two contiguous quarter turrets, if: the Options Committee approves it, the specialists and all Wheel participants on those Wheels agree, and the particular circumstances warrant extending the Wheel assignment area.[9]

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Wheel provisions were approved by the Commission in 1994 as Advice F–24.[10] The purpose of the Wheel is to increase the efficiency and liquidity of order execution through AUTO-X by including all floor traders in the automated assignment of contra-parties to incoming AUTO-X orders. Thus, the Wheel is intended to make AUTO-X more efficient, as contra-side participation will be assigned automatically, and no longer entered manually. The Wheel also is intended to promote liquidity by including ROTS, as opposed to solely Specialists, as a contra-side to AUTO-X orders.

The floor-wide roll-out of the Wheel was completed the week of April 21, 1997. As a result of the experience garnered from Wheel implementation thus far, the Exchange proposes two changes to address specific issues that have arisen on the trading floor. First, the Exchange proposes to require ROTs to sign-off the Wheel after leaving the Wheel assignment area for more than a brief interval. The Exchange's Options Committee has determined that performing stock execution or hedging functions near the crowd does not constitute leaving the crowd. Further, the ROT is required to be present in the Wheel assignment area, but not necessarily the trading crowd. If an ROT does leave the Wheel assignment area for more than a brief interval, under the proposal, the ROT would be: fined, removed from all Wheel participation for the remainder of the day and held responsible for Wheel trades assigned until the sign-off is processed.[11] The purpose of this provision is to encourage presence in the Wheel assignment area, to minimize marketplace disruptions by not reallocating Wheel trades from absent ROTs, and to deter violations by imposing a fine schedule for minor violations.

The second aspect of this proposal concerns the definition of the Wheel assignment area. During the roll-out, the Exchange learned that it is possible to be "actively making markets in the specific issues" and be considered "present" in a Wheel assignment area that is larger than two contiguous quarter turrets. Specifically, in certain areas of the trading floor, depending on the physical layout of the trading posts, and where there is little trading activity, visibility and access across turrets is greater than initially determined when Wheel procedures were drafted in 1994. Thus, the Exchange believes that this proposal, which takes into account trading activity and crowd size as well as the intervening trading posts, fairly extends the Wheel assignment area where warranted, which should promote liquidity and ROT Wheel participation in less active issues. Thus, the proposal is limited to extending the Wheel assignment area where, with the approval of the Options Committee, the specialists and all Wheel participants on those Wheels agree that an ROT can be actively making markets in that particular situation and can, thus, be considered present in such Wheel issues, until the specialists or any other Wheel participants in the affected Wheel assignment area no longer agree that the circumstances warrant an extension.[12]

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act[13] in general, and in particular, with Section 6(b)(5),[14] in that the amendments are designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation

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has left the Wheel assignment area to summon a Floor Official. *See* Amendment No. 1, *supra* note 3.

[7] The proposal, as originally filed, subjected the ROT to removal and a fine *only* if the ROT left the Wheel assignment area for more than a brief interval *and* the ROT was assigned a trade while away from the Wheel. Pursuant to Amendment No. 1, the ROT is subject to both removal and a fine if the ROT leaves the Wheel assignment area for more than a brief interval without signing off the Wheel, regardless of whether a trade occurs during the trader's absence. Amendment No. 1 also clarified that once a Floor Official has determined that a violation has occurred, the Floor Official is required to subject the ROT to removal and a fine. *See* Amendment No. 1, *supra* note 3.

[8] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice F–24, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[9] As originally filed, the proposal established that the Wheel assignment area could be extended with the approval of two Floor Officials, both specialists and all Wheel participants on both Wheels. The proposal was amended to require the approval of the Phlx's Options Committee, rather than two Floor Officials, and to clarify that the proposed rule does not limit the extension of the assignment area to two Wheels. *See* Amendment No. 1, *supra* note 3.

[10] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (SR–Phlx–94–32).

[11] *See supra* note 7.

[12] *See supra* note 9.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest, by encouraging ROT presence in the Wheel assignment area by establishing punitive measures for failure to do so and flexibly extending the Wheel assignment area where warranted to encourage additional ROT participation. This, in turn, should further the intent of the Wheel to promote ROT participation as contra-parties to AUTO–X trades and to reduce opportunities for keypunching errors through increased automation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–21 and should be submitted by August 25, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Phlx's proposed rule change and believes, for the reasons set forth below, the proposal, as amended, is consistent with the requirements of Section 6 of the Act,[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act[17] because it will facilitate the operation of the Wheel, which will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission believes that the proposed provision relating to removal of ROTs from the Wheel under specifically-defined circumstances should clarify the responsibilities and duties undertaken by Wheel participants, thereby resulting in less conflict and disruption relating to the operation of the Wheel. The Commission also believes that including violations of Advice F–24 in the Exchange's minor rule plan[18] is consistent with the Act. The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be costly and time-consuming in light of the minor nature of the violation. The Commission notes that violations of Advice F–24 are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether an ROT has left the Wheel assignment area for more than a brief interval may be determined objectively and adjudicated quickly without complicated factual and interpretive inquiries.[19] The Commission believes that the proposed fine schedule, coupled with the proposed provisions requiring the ROT to be removed from the Wheel for the rest of the day and to be responsible for all assigned trades, should serve to encourage consistent Wheel participation and to deter repeated violations of the Exchange's rules.

In addition, the Commission believes that the proposed provision relating to Wheel assignment areas provides participants some flexibility in Wheel selection by extending an ROT's Wheel assignment area beyond two contiguous quarter turrets if circumstances warrant. The Commission notes that in evaluating a request for an extension of the Wheel assignment area, the Options Committee must, on a case-by-case basis, consider the trading activity and crowd size in the particular options, as well as the intervening posts. The Commission further notes that all affected specialists and ROTs must agree with the determination of the Options Committee to expand the Wheel assignment area. The Commission believes that expansion of the Wheel assignment area should promote liquidity and ROT Wheel participation in less active issues. Accordingly, the Commission believes that the proposed changes will facilitate the operation of the Wheel and, therefore, the proposed rule change is appropriate and consistent with Section 6 of the Act.[20]

The Commission finds good cause for approving the proposed rule change, including Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed changes reflect input received from several Exchange committees and floor members based on their experiences with the Wheel to date. Moreover, the Commission notes that the proposed changes concerning removal of floor traders and the extension of Wheel assignment areas relate specifically to Phlx member participation on the Wheel. The proposal does not affect public customers using AUTO-X, which will continue to execute public customer orders automatically. Further, the Commission notes that those directly affected by the proposed changes, Phlx member Wheel participants, will have an opportunity to express their views with respect to any request for the extension of Wheel assignment areas. With regard to the implementation of Wheel sign-off procedures and the institution of a fine mechanism for violations of such procedures, the Commission believes that expedited approval of the proposal is appropriate in order to ensure optimal performance of the Wheel and to prevent market disruptions that can occur if Wheel-assignment trades must be re-allocated

[15] 15 U.S.C. 78f.

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 8.

[19] The Commission notes that the Phlx has the discretion to take any violations, including those under the minor rule plan, to full disciplinary proceedings and would expect the Phlx to do so where appropriate, for example, in cases of egregious and repeated violations of Advice F–24.

[20] 15 U.S.C. 78f.

from absent Wheel participants. Therefore, the Commission believes that granting accelerated approval of the proposed rule change, as amended, is consistent with Sections 6 and 19(b)(2) of the Act.[21]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR-Phlx-97-21), including Amendment Nos. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-20412 Filed 8-1-97; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-3(11)]

Daniels on Behalf of Daniels v. Sullivan; Application of a State's Intestacy Law Requirement That Paternity be Established During the Lifetime of the Father

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-3(11).

EFFECTIVE DATE: August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eleventh Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after August 4, 1997. If we made a determination or decision on your application for benefits between December 30, 1992, the date of the Court of Appeals decision, and August 4, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners.)

Dated: December 20, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Editorial note: This document was received at the Office of the Federal Register July 28, 1997.

Acquiescence Ruling 97-3(11)

Daniels on Behalf of Daniels v. *Sullivan*, 979 F.2d 1516 (11th Cir. 1992)—Application of a State's Intestacy Law Requirement that Paternity be Established During the Lifetime of the Father—Title II of the Social Security Act.

Issue: Whether, in determining a child's status under section 216(h)(2)(A) of the Social Security Act (the Act), the Social Security Administration (SSA),[1] in applying the requirement imposed by a State's law of intestate succession that an illegitimate child establish paternity during the lifetime of the father, created an insurmountable barrier that violated the constitutional right to equal protection of the law.

Statute/Regulation/Ruling Citation: Sections 202(d) and 216(h)(2)(A) of the Social Security Act (42 U.S.C. 402(d) and 416(h)(2)(A)); 20 CFR 404.354(b).

Circuit: Eleventh (Alabama, Florida, Georgia)

Daniels on Behalf of Daniels v. Sullivan, 979 F.2d 1516 (11th Cir. 1992).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: On April 11, 1985, Cassandra Daniels, who was 14 years old, gave birth to a son, Adonis Daniels. Daniels claimed that Kirby Marshall was Adonis' father even though Daniels and Marshall never married or lived together, and a father's name was not listed on the child's birth certificate. Although Marshall did not provide support for Adonis, both Daniels' mother and Marshall's mother stated that he was the father. Marshall died in an automobile accident on September 12, 1987.

In November 1987 Daniels filed an application, on behalf of Adonis, for child's benefits on Marshall's earnings record but the claim was denied, both initially and upon reconsideration, because the child did not satisfy any of the statutory entitlement requirements. After a hearing, an ALJ found that Adonis was not Marshall's "child" under section 216(h)(3) of the Act because the deceased wage earner was not living with or contributing to the support of Adonis at the time of his death. The ALJ also found that Adonis was not entitled under the other definitions of child in section 216(h), including the definition incorporated by reference from the Georgia law of intestate succession.[2] However, the ALJ stated that Adonis appeared to be the child of the worker. The Appeals Council denied Daniels' request for review of the ALJ's decision.

The plaintiff sought judicial review alleging that SSA's application of the Georgia statutory scheme for intestate succession was unconstitutional because it denied her child equal protection of law. The district court affirmed SSA's findings and rejected the

[21] 15 U.S.C. 78f and 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30-3(a)(12).

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security programs under title II of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] At the pertinent time, Georgia law provided that a child born out of wedlock may inherit from or through his father or any paternal kin only if the criteria specified in the statute are satisfied "during the lifetime of the father and after conception of the child." A 1991 amendment, not applicable in this case, expanded the time frame for establishing paternity to include the period when proceedings on the father's estate are pending.

constitutional challenge. Daniels appealed and the United States Court of Appeals for the Eleventh Circuit reversed the judgment of the district court on the grounds that, as applied to the particular facts of the case, SSA's use of Georgia intestacy law was unconstitutional.

Holding: After carefully considering the principles stated in the leading cases addressing the constitutionality of similar State statutes, the Court of Appeals held that "as applied to this case, the Social Security Act's incorporation of the Georgia intestacy scheme violates equal protection."[3] Noting that the United States Supreme Court, in *Pickett* v. *Brown*, had ruled unconstitutional a State statute that imposed a two-year limit on paternity and child support actions on behalf of certain illegitimate children, the *Daniels* court found that the obstacles that prevented a child from establishing paternity during the first two years after birth persisted, at least, into the third year. Accordingly, the court concluded that "where the father died less than two and one-half years after Adonis' birth, the requirement that paternity be established during the lifetime of the father effectively 'impose[d] an unconstitutional insurmountable barrier which denie[d] appellant the equal protection of the laws.'"[4]

The court also noted that Daniels was further impeded in establishing the paternity of her child because of her status as a minor. Although the court did not hold that the Georgia intestacy statute was unconstitutional, it found that SSA's application of that statute to the specific facts of the case when determining Daniels' eligibility for Social Security survivors benefits violated equal protection.

Statement As To How Daniels Differs From Social Security Policy

In accordance with section 216(h)(2)(A) of the Act, SSA uses State laws to decide whether a claimant is the child of a deceased worker. Under its regulation (20 CFR 404.354(b)) implementing section 216(h)(2)(A), SSA "look[s] to the laws that were in effect at the time the insured worker died in the State where the insured had his or her permanent home." The State laws governing intestate succession (i.e., the laws State courts use to decide whether a claimant could inherit a child's share of the worker's personal property if the worker had died without leaving a will) are controlling.

The *Daniels* court found that the Act's incorporation of the Georgia intestacy law's requirement that the paternity of an illegitimate child be established during the lifetime of the father was unconstitutional as applied to the facts in Daniels' case, where paternity would have had to be established in less than two and one-half years from the date of the child's birth. Under these circumstances, the court found that the requirement constituted an insurmountable barrier and violated the child's right to equal protection of law.

Explanation of How SSA Will Apply The Daniels Decision Within The Circuit

This Ruling applies only to cases where the applicant for surviving child's benefits under section 216(h)(2)(A) of the Act resides in Alabama, Florida or Georgia at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When adjudicating a claim for surviving child's benefits involving the establishment of inheritance rights under a State's intestacy law, SSA will allow a period of two and one-half years from the date of birth of the applicant for the commencement and resolution of legitimacy proceedings before applying a statutory requirement that requires an illegitimate child to establish paternity during the lifetime of the father. Adjudicators will continue to apply the other provisions of State intestacy law in effect on the date of the worker's death.

[FR Doc. 97–20272 Filed 8-1-97; 8:45am]
BILLING CODE 4190-29-F

[3] The court considered the following leading cases: *Clark* v. *Jeter*, 486 U.S. 456 (1988); *Pickett* v. *Brown*, 462 U.S. 1 (1983); *Mills* v. *Habluetzel*, 456 U.S. 91 (1982); *Lalli* v. *Lalli*, 439 U.S. 259 (1978); and *Handley, By and Through Herron* v. *Schweiker*, 697 F.2d 999 (11th Cir. 1983).

[4] Quoting *Handley*, 697 F.2d at 1003.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on OMB Control Number: 2133–0522 was published on May 19, 1997 (FR 62 27290). The **Federal Register** Notice with a 60-day comment period soliciting comments on OMB Control Number: 2133–0517 was published on May 13, 1997 (FR 62 26348).

DATES: Comments must be submitted on or before September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

1. Title: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Number: None.

Affected Public: Description of Respondents: Officers or members of a crew (or their surviving dependents or beneficiaries, or by their legal representatives) who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Abstract: Collects information from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Need and Use of the Information: The information collected is evaluated by MARAD to determine if the claim is fair and reasonable. If the claim is allowed, it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

Annual Estimated Burden: 750 hours.

2. Title: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Number: None.

Affected Public: Foreign underwriters of marine insurance and insurance brokers placing marine hull insurance if less than 50 percent of the placement is made in the American market.

Abstract: Concerns approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be required to submit

financial data upon which MARAD approval would be based. In certain cases, brokers would be required to certify that American underwriters were offered opportunity to compete for the business.

Need and Use of the Information: 46 CFR part 249, published as a final rule on June 20, 1988, prescribes regulations for approval of underwriters for marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended. The regulations provide for approval of foreign underwriters on the basis of an assessment of their financial condition, the regulatory regime under which they operate, and a statement attesting to a lack of discrimination in their country against U.S. hull insurers. The regulations also require that American underwriters be given an opportunity to compete for every placement, thereby necessitating in some cases certification that such opportunity was offered.

Estimated Annual Burden: 66 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer. Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 29, 1997.

Phillip A. Leach,

Clearance Officer, United States, Department of Transportation.

[FR Doc. 97–20467 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of July 25, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2760 .

Date Filed: July 23, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR 0030 dated July 11, 1997, USA-Europe Resolutions (except between US-Aust/Belg/Germ/Neth/Scand/Switz) R–29. Minutes—PTC12 USA–EUR 0029 dated July 18, 1997. Tables—PTC12 USA–EUR Fares 0011 dated July 18, 1997. Intended effective date: April 1, 1998.

Docket Number: OST–97–2766.

Date Filed: July 25, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SEA 0029 dated June 30, 1997, Mail Vote 879 (Europe-Taiwan fares). Amendment to Mail Vote. Correction to Mail Vote. Intended effective date: September 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–20449 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 25, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2765.

Date Filed: July 25, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 22, 1997.

Description: Application of American International Airways, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for an amendment to its certificate authority for Route 677 authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in Singapore, Thailand, and Indonesia.

Docket Number: OST–97–2764.

Date Filed: July 25, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 22, 1997.

Description: Joint Application of Federal Express Corporation and Florida West International Airways, Inc., pursuant to 49 U.S.C. Section 41105 and Subpart Q of the Procedural Regulations, requests approval of the transfer to Federal Express of certain certificate authority now held by FWIA, authorizing FWIA to provide scheduled all-cargo foreign air transportation between the United States and Colombia.

Paulette V. Twine,

Chief Documentary Services.

[FR Doc. 97–20455 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 97–6–3 established the currently effective two-month SFFL applicable through July 31, 1997.

In establishing the SFFL for the two-month period beginning August 1, 1997, we have projected non-fuel costs based on the year ended March 31, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 97–7–32 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.3569

Latin America—1.4045

Pacific—1.4957

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: July 30, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–20477 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 6]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: FRA has decided to begin publishing regular announcements of RSAC working group activities and status reports. This announcement constitutes the first such status report.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION: In order to ensure that all concerned persons are aware of the tasks the RSAC is addressing, and to enable those persons who may not be RSAC or working group members to follow progress on those tasks, FRA has decided to begin publishing regular announcements of RSAC working group activities and status reports. These reports will be published following each meeting of the full RSAC, which currently are occuring on a quarterly basis. Accordingly, this first announcement will serve to inform the public of the status of each of the working groups created under the RSAC since its creation in March 1996, whether or not they are currently operative. Hereafter, these announcements will be limited to the communication of current working group activities only.

The Federal Railroad Administration ("FRA") has presented ten (10) tasks to the Railroad Safety Advisory Committee ("RSAC") since its creation. Working groups have been established to execute all ten (10) of these tasks. A few of the tasks have been completed, and recommendations presented to the agency. Only one task has had to be withdrawn from the RSAC due to the failure of the parties to reach consensus on any recommendations to the Administrator.

Since its first meeting in April of 1996, the RSAC has been presented with, and accepted, the following tasks (detailed status and contact information is provided for each) :

- *(1) Reviewing and recommending revisions to the regulations governing Power Brake Systems for Freight Equipment (49 CFR Part 232)* (Task accepted April 2, 1996. Working Group established. Ten (10) working group meetings held. Eight to ten (8–10) separate task force meetings held. Task withdrawn June 24, 1997 due to the working group members' inability to reach consensus);
- *(2) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213)* (Task accepted April 2, 1996. Working Group established. Six meetings held. Consensus reached on recommended revisions. NPRM incorporating these recommendations published in **Federal Register** on 7/3/97. "Track Safety Standards;Miscellaneous Revisions," 62 FR 36138);
- *(3) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220)* (Task accepted April 2, 1996. Working Group established. Ten (10) meetings held. Consensus reached on recommended revisions. NPRM incorporating these recommendations published in the **Federal Register** on 6/26/97. "Railroad Communications; Notice of Proposed Rulemaking," 62 FR 34544);
- *(4) Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads* (Task accepted April 2, 1996. Working Group established. One (1) meeting held.);
- *(5) Reviewing and recommending revisions to Steam Locomotive Inspection standards (49 CFR Part 230)* (Tasked to existing Tourist and Historic Working Group (THWG) on July 24, 1996. Six (6) Task Force meetings held.);
- *(6) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240)* (Task accepted October 31, 1996. Working Group established. The working group has met 6 times since this task was assigned, and plans to next meet the week of October 6, 1997.);
- *(7) Developing On-Track Equipment Safety Standards (new regulation)* (This was tasked to the existing Track Standards Working Group on October 31, 1996. The Task Force has met 2 times since this task was assigned);
- *(8) Developing Crashworthiness Specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. (New regulation) (Task accepted June 24, 1997. A working group is being established to begin the work required to execute this task);*
- *(9) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. (New regulation)* (Task accepted June 24, 1997. A working group is being established to begin the work required to execute this task).
- *(10) Developing Event Recorder Data Survivability standards (New regulation)* (Task accepted June 24, 1997. A working group is being established to begin the work required to execute this task).

If you have any questions about any of these working groups please refer to the following list of FRA contacts who can assist you with questions regarding any of the above-listed tasks:

(1) *Power Brake Working Group*—Michael Huntley (202) 632–3366 or Thomas Herrmann (202) 632–3178;

(2) *Track Safety Standards Working Group*—Al McDowell (202) 632–3344 or Nancy Lewis (202) 632–3174;

(3) *Radio Communications Working Group*—Gene Cox (202) 632-3504 or Patti Sun (202) 632–3183;

(4) *Tourist and Historic Working Group*—Grady Cothen (202) 632-3306 or Lisa Levine (202) 632–3189;

(5) *Steam Inspection Standards Task Force*—George Scerbo (202) 632–3363 or Lisa Levine (202) 632–3189;

(6) *Locomotive Engineer Certification Working Group*—John Conklin (202) 632–3372 or Alan Nagler (202) 632–3187;

(7) *On-Track Equipment Safety Standards Task Force*—Al McDowell (202) 632–3344 or Nancy Lewis (202) 632–3174;

(8) *Locomotive Crashworthiness Working Group*—Michael Huntley (202) 632–3366 or Lisa Levine (202) 632–3189;

(9) *Locomotive Crew Working Conditions Working Group*—Michael Huntley (202) 632–3366 or Christine Beyer (202) 632–3177; and

(10) *Event Recorder Data Survivability Working Group*—Ron Newman (202) 632–3365 or Tom Phemister (202) 632–3181.

Please refer to the notice published in the **Federal Register** on March 11, 1996

(61 F.R. 9740) for more information about the RSAC.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 97–20487 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2707; Notice 1]

Pipeline Safety: Liquefied Natural Gas Facilities Petition for Waiver; Applied LNG Technologies

Applied LNG Technologies (ALT) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with certain provisions of 49 CFR part 193 for its Needle Mountain Liquefied Natural Gas (LNG) storage and truck loading facility at Topock, Arizona. This facility consists of two 50,000 gallon LNG storage tanks and a truck transfer system. It is piped to a liquefaction facility owned and operated by a subsidiary of El Paso Natural Gas. A transmission pipeline, owned by El Paso Natural Gas Company supplies Part 192 regulated gas to the El Paso liquefaction facility. ALT alleges that an extension of Part 193 jurisdiction to the Needle Mountain LNG storage and truck loading facility would be inconsistent with the language of Section 193.2001(a). Section 193.2001(a) states "This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the Natural Gas Pipeline Safety Act of 1968 and Part 192 of this chapter". ALT states that the Needle Mountain LNG storage and truck loading facility would not be transporting natural gas by pipeline. ALT further points out that Section 193.2001(b)(1) states "This part does not apply to LNG facilities used by the ultimate consumer of LNG or natural gas". ALT states that this facility would be loading LNG into tank trucks for delivery to commercial and industrial customers, thus, it is the ultimate consumer of LNG. Therefore, ALT alleges that the Needle Mountain LNG storage and loading facility is non-jurisdictional.

On May 16, 1997, the RSPA issued an Interpretation of Part 193 as it applies to the Needle Mountain LNG Storage and truck loading facility. LNG storage and truck loading facility is owned and operated by Applied LNG Technology, Inc. The liquefaction facility and piping is owned and operated by a subsidiary of El Paso natural gas. However, the land on which the storage facility sits is owned by El Paso Natural Gas. In that interpretation, RSPA stated that regardless of who owns or operates different sections of an LNG facility, it is subject to Part 193 in its entirety. Part 193 encompasses all parts of an LNG facility from the point at which it receives gas from a Part 192 regulated gas transmission pipeline through the liquefaction process, storage, and transfer into a motor carrier vehicle.

ALT now requests a waiver from compliance with certain sections of Part 193 and proposes to ensure equivalent safety through compliance with the National Fire Protection Association (NFPA) standard 59A. The specific sections of Part 193 for which ALT seeks a waiver are:

(1) *Section 193.2173—Water Removal:* § 193.2173(a) requires that except for Class 1 systems, impounding systems must have sump pumps and piping over the dike to remove water collecting in the sump basin.

NFPA 59A section 2–2.2.7 requires either sump pumps or gravity drainage for water removal, provided there is means to prevent the escape of LNG by way of the drainage system.

ALT's rationale for noncompliance: The impoundment area in this facility drains to a sump basin. A sump pump is not provided due to the arid location. In the rare event of rain in Topock, AZ, ALT does not expect to have standing water for any length of time.

RSPA would agree with ALT that a sump pump and piping are not necessary at this LNG facility due to the arid location only if ALT can demonstrate that there would be no standing water (i.e., proving ground is permeable) in the sump for any significant period. RSPA proposes to grant the waiver from § 193.2173 subject to the above condition.

(2) *Section 193.2209(b)(2)—Instrumentation for LNG storage tanks:* For LNG tanks with capacity of 70,000 gallons or less, § 193.2209(b)(2) requires pressure gages and recorders with high pressure alarm.

NFPA 59A 7–2.1 requires only a pressure gage.

ALT does not believe that safety has been compromised by requiring only a pressure gage, because any high pressure in the storage tank is controlled by a recompressor system within the "facility" that maintains the storage pressure at 20 psig. Any failure of this system places the entire storage facility in a "fail safe" (shut down) mode.

RSPA believes that recorders (at the storage tank site and possibly at the control center) and a high pressure alarm (at the control center) are essential in the event of the failure of the recompressor system. Although the entire storage facility will be placed in a shut down mode, there appears to be no way to prevent pressure from increasing in the LNG storage tank. This is especially important because this LNG storage facility will be an unattended operation. Therefore, RSPA is proposing not to grant a waiver from § 193.2209(b)(2).

(3) *Section 193.2321(a)—Nondestructive tests, Circumferential butt welds:* § 193.2321(a) requires that 100 percent of circumferential butt welded pipe joints in the cryogenic piping and 30 percent of circumferential butt welded pipe joints in the non-cryogenic piping be nondestructively tested.

NFPA 59A 6–6.3.2 requires all circumferential butt welds to be nondestructively tested, except that liquid drain and vapor vent piping with an operating pressure that produces a hoop stress of less than 20 percent of specified minimum yield stress (SMYS) need not be nondestructively tested, provided it has been inspected visually in accordance with the American Society of Mechanical Engineers (ASME)standard B31.3, Chemical Plant and Petroleum Refinery Piping, 344.2.

RSPA believes that safety is not compromised and is considering granting a waiver from § 193.2321(a) for the liquid drain and vapor vent piping with operating pressures that produce hoop stresses of less than 20 percent SMYS, if that piping complies with the NFPA 59A 6–6.3.2.

(4) *193.2321(e)—Nondestructive tests, Circumferential and longitudinal welds in metal shells of storage tanks:* § 193.2321(e) requires 100 percent of both longitudinal and circumferential butt welds in metal shells of storage tanks that are subject to cryogenic temperatures, and are under pressure, to be radiographically tested.

NFPA 59A 4–2.2.2 requires welded construction for shell in accordance with the ASME Code section VIII, and shall be ASME-stamped and registered with the National Board of Boiler and Pressure Vessels(NBBI)

ALT's rationale for requesting a waiver is that safety in this case is not compromised as ALT storage tanks are small, shop fabricated, and built to ASME Code. ASME Section VIII is an accepted standard to which cryogenic pressure vessels are built all over the world.

RSPA agrees that safety is not compromised by waiving the requirements of § 193.2321(e) for smaller pressure vessels (less than

70,000 gallons) which are designed and built to ASME Code VIII (greater than 15 psig). Tanks built to this code are shop fabricated under strict quality control and are inspected and stamped by the Authorized Inspectors of the NBBI. Storage tanks at the ALT LNG facility are built to ASME code Section VIII and have a capacity of 50,000 gallons (relatively small). Therefore, RSPA is proposing to grant the waiver from § 193.2321(e).

(5) *Sections 193.2329 (a) and (b)—Construction Records:* § 193.2329(a) require that an operator shall retain records of specifications, procedures, and drawings consistent with this part, and § 193.2329(b) requires that an operator shall retain records of results of tests, inspections and quality assurance program required by this subpart.

ALT requests a waiver for records for design and manufacture of the pressure vessels, because they are built to the ASME code as referenced in NFPA 59A. ALT would comply with all other record keeping requirements in accordance with §§ 193.2329 (a) and (b).

RSPA agrees and is proposing to grant waiver from §§ 193.2329 (a) and (b) for those parts of its facility where ALT has requested and has been granted a waiver.

(6) *Section 193.2431(c)—Vents*: § 193.2431(c) requires that venting of natural gas/vapor under operational control which could produce a hazardous gas atmosphere must be directed to a flare stack or heat exchanger.

NFPA 59A 3–4.5 also requires safe discharge of boil-off and flash gas to the atmosphere or into a closed system. NFPA 10–12.4.4 requires that safety relief valve discharge stacks or vents shall discharge directly into the atmosphere.

ALT is requesting a waiver from § 193.2431(c) which requires flare stacks. ALT's reasons for noncompliance are that (i) safety relief valves relieve under emergency conditions, and (ii) there will be no boil-off venting at this facility because LNG storage vessels are maintained at a storage pressure of 20 psi by a recompressor system.

RSPA agrees that at this LNG facility recompressor system will maintain a pressure of 20 psi in the LNG storage tanks. Therefore, no continuous discharge of boil-off to atmosphere is expected. RSPA believes that relief valves discharge only under emergency conditions. Therefore, it is safe to discharge them to the atmosphere through a stack without flaring.

Therefore, RSPA is proposing to grant a waiver from compliance with § 193.2431(c), as long as relief valves discharge through stacks which are higher than surrounding structures at this facility.

(7) *Section 193.2817 (b)(2)—Fire Equipment*: § 193.2817(b)(2) requires fire control equipment and supplies to include a water supply and associated delivery system, if the total inventory of LNG is 70,000 gallons.

NFPA 59A 9–5.1 similarly requires a water system except where an evaluation in accordance with 9–1.2 indicates the use of water is unnecessary or impractical. Section 9–1.2 also requires evaluation of the methods necessary for protection of the equipment and structures from the effects of fire exposure.

ALT not only requests a waiver from § 193.2817(b)(2), but also takes an exception to NFPA 59A 9–5.1. ALT's rationale for such a waiver is that this facility is remotely located, generally unattended, and is equipped with fire detection sensors which will annunciate fire detection to the control center, as well as initiate a facility shutdown to a fail-safe condition.

RSPA disagrees with ALT's rationale that water is unnecessary and impractical at this facility. This LNG facility has two 50,000 gallon capacity storage tanks, processors, liquefiers, compressors, and piping. For protection of the above components and for controlling unignited leaks and spills, RSPA believes that a fire protection water system is necessary. From the information available to RSPA, it appears that providing a water system at this facility is feasible. Therefore, RSPA is not proposing to grant a waiver from § 193.2817(b)(2).

Except for the sections for which RSPA is proposing to grant a waiver, this LNG facility must meet all the other requirements of Part 193. For the sections for which RSPA proposes to grant a waiver, RSPA believes that the granting of a waiver from these requirements would not be inconsistent with pipeline safety, as long as ALT follows alternative provisions in the NFPA 59A.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice number, and should be addressed to the Docket facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001.

All comments received before September 30, 1997, will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue. All comments and other docketed material will be available for inspection and copying in room 401 plaza between the hours of 10:00 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C. on July 30, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–20468 Filed 8–1–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33425]

I & M Rail Link, LLC—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) will agree to grant limited overhead trackage rights to I & M Rail Link, LLC (IMRL), between milepost 429.7 in the vicinity of Division Street, St. Paul, MN, and milepost 11.6 in the vicinity of the Shoreham Yard Switch, Minneapolis, MN. The trackage includes both the route between the above-referenced mileposts via BNSF's St. Paul Sub-Division, a total of 11.9 miles, and the route between those same mileposts via BNSF's Midway Sub-Division, a total of 11.4 miles. IMRL's use of a particular route will be determined by BNSF.

The transaction was expected to be consummated on or after the July 29, 1997 effective date of the exemption.

The purpose of this transaction, in the interest of operating economies and improving service, is to permit IMRL to handle traffic to and from the Soo Line Railroad Company's Shoreham Yard at Minneapolis, and to pick up and deliver interchange traffic to BNSF at either Dayton's Bluff or Northtown Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false

or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33425, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: H. Gerry Anderson, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: July 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–20369 Filed 8–1–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–19: OTS No. 3682]

Citizens Savings Bank of Frankfort, Frankfort, Indiana; Approval of Conversion Application

Notice is hereby given that on July 23, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Citizens Savings Bank of Frankfort, Frankfort, Indiana, 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, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: July 30, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–20479 Filed 8–1–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–20; OTS No. 0800]

Pioneer Bank, a Federal Savings Bank, Baker City, Oregon; Approval of Conversion Application

Notice is hereby given that on July 23, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Pioneer Bank, a Federal Savings Bank, Baker City, Oregon, 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, N.W., Washington, D.C. 20552, and the West Regional Office, Office of Thrift Supervision, Pacific Telesis Tower, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: July 30, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–20480 Filed 8–1–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–21; OTS Nos. H–2166 and 04347]

Riverview, M.H.C., Camas, Washington; Approval of Conversion Application

Notice is hereby given that on July 29, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Riverview, M.H.C., Camas, Washington, 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, Pacific Telesis Tower, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: July 30, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–20481 Filed 8–1–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–22; OTS No. 2173]

Spring Hill Savings Bank, F.S.B., Pittsburgh, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on July 28, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Spring Hill Savings Bank, F.S.B., Pittsburgh, Pennsylvania, 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 Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: July 30, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–20482 Filed 8–1–97; 8:45 am]

BILLING CODE 6720–01–M

federal register

Monday
August 4, 1997

Part II

Department of Education

Individuals With Disabilities Education Act; Notice Inviting Applications for New Awards for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

Individuals With Disabilities Education Act; Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1998.

SUMMARY: On June 4, 1997, the President signed into law Pub. L. 105–17, the Individuals with Disabilities Education Act Amendments, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under four programs authorized by the Individuals with Disabilities Education Act (the Act, as amended by the 1997 amendments). The priorities under these programs are based on the statutory provisions in the Act or on previously published priorities, as indicated in each priority. Only changes authorized by the 1997 Amendments to IDEA were made to priorities previously published. For example, the Act no longer refers to "youth with disabilities". "Youth with disabilities" is no longer distinguished from "children with disabilities" under the Act; therefore, all references to "youth with disabilities" have been deleted from the priorities. Also, the types of entities eligible to apply for grants under these programs have been changed where necessary to reflect changes in the Act.

This notice supports the National Education Goals by improving understanding of how to enable children with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Research and Innovation To Improve Services and Results for Children With Disabilities (CFDA No. 84.023)

Purpose of Program: To produce, and advance the use of, knowledge to (1) improve services provided under the Act, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations in 34 CFR 324.31.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under sections 661(e)(2) and 672 of the Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Field-Initiated Research Projects (84.023C). This statutory priority provides support for a wide range of field-initiated research projects that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction and learning of infants, toddlers, and children with disabilities as described in section 672 of the Act.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

A project must budget for a trip to Washington, DC. for the annual two-day Research Project Directors' meeting.

Invitational Priorities

Within Absolute Priority 1 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(1) Projects to address the specific problems of over-identification and under-identification of children with disabilities. (See section 672(a)(3) of the Act).

(2) Projects to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services. (See section 672(a)(4) of the Act).

(3) Projects studying and promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, evaluation and accountability of those reforms, and administrative procedures. (See section 672(b)(2)(D) of the Act).

(4) Projects that advance knowledge about the coordination of education with health and social services. (See section 672(b)(2)(G) of the Act).

Project Period: The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as research questions that require repeated measurement within a longitudinal design—will projects be funded for more than 36 months, up to a maximum of 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit the Part III of its application—Application Narrative, to no more than 50 double-spaced 8 ½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Student-Initiated Research Projects (84.023B). This absolute priority was published in the **Federal Register** on November 21, 1994 (59 FR 60054).

This priority provides support for short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in section 672 of the Act.

Projects must—

(1) Develop research skills in postsecondary students; and

(2) Include a principal investigator who serves as a mentor to the student researcher while the project is carried out by the student.

A project must budget for a trip to Washington, DC for the annual two-day Research Project Directors' meeting.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

Project Period: Up to 12 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $20,000 for the entire project period. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register.**

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 25 double-spaced 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 3—Initial Career Awards (84.023N). This absolute priority was published in the **Federal Register** on March 5, 1996 (61 FR 8810).

Background: There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education and related services for children with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in section 672 of the Act.

Priority: The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individuals career is considered to be the first three years after completing a doctoral program and graduating (e.g., for fiscal year 1998 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1994–95 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) In addition to involving individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project, as required by the Act, include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to pursue effectively the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project's budget must include funds to attend the two-day Research Project Directors' meeting to be held in Washington, DC each year of the project.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $75,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register.**

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 30 double-spaced 8½× 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 672 of the Act.

Personnel Preparation To Improve Services and Results for Children With Disabilities (CFDA No. 84.029)

Purpose Of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

Eligible Applicants: Institutions of higher education and private nonprofit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The selection criteria included in regulations in 34 CFR 318.22; and (c) 34 CFR 318.31–33.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under section 661(e)(2) and 673 of the Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities (84.029A). This absolute priority was published in the **Federal Register** on May 9, 1996 (61 FR 21230).

Background: The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States are reluctant to support the needed professional development programs. Of the programs that are available, not all are producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Federal support is required to ensure an adequate supply of personnel to serve children with low-

incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

The term "low-incidence disability" means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

Applicants may propose to prepare one or more of the following types of personnel:

(1) Special educators including early childhood, speech and language, adapted physical education, and assistive technology personnel;

(2) Related services personnel who provide developmental, corrective, and other supportive services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs and specialty components within a broader discipline that prepares personnel for work with the low-incidence population may be supported; or,

(3) Early intervention personnel who serve children birth through age 2 with low-incidence disabilities and their families. Early intervention personnel include persons prepared to provide training for, or be consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and include collaboration among several institutions and between training institutions and public schools. In addition, projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

To be considered for an award an applicant must satisfy the following requirements contained in section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development (CSPD) under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel (See section 673(g)(2) of the Act); and

(e) Ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations to be issued by the Secretary.

The application requirement described in paragraph (e) is required by section 673(h)(1) of the Act (20 U.S.C. 1474(h)(1)). Because this provision was added to the Act during the recent reauthorization, the Secretary has not had the opportunity to promulgate regulations, but expects to do so before grant awards are made. In order for an applicant to provide the assurances required by statute, the applicant must, at a minimum, describe:

(1) How it will notify trainees of the work or repay requirement; and (2) How it will notify trainees when the regulations are finalized. The Secretary encourages applicants to award stipends and scholarships that last at least for one-year. By having at least one-year stipends and scholarships, it would be less likely that any trainee would enter work or repay status before the regulations are in effect.

Each project funded under this absolute priority must—

(a) Prepare personnel to address the specialized needs of children with low-incidence disabilities from different cultural and language backgrounds;

(b) Incorporate best practices in the design of the program and the curricula;

(c) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(d) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(e) Develop linkages with Education Department technical assistance providers to communicate information on program models used and program effectiveness;

(f) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille (See section 673(b)(5) of the Act);

Under this absolute priority, the Secretary plans to award approximately:

- 55 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 30 percent of the available funds for projects that support careers in related services; and
- 15 percent of the available funds for projects that support careers in early intervention.

A project's budget must include funds to attend a two-day Project Director's meeting to be held in Washington, D.C. each year of the project.

Competitive Priority

Within this absolute priority, the Secretary under 34 CFR 75.105(c)(2)(ii), and section 673(g)(3)(B) of the Act will select an application from an institution of higher education that is successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals over an application of comparable merit that does not meet the priority.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register.**

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 40 double-spaced 8½ × 11″ pages (on one side only) with one inch margins (top,

bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Preparation of Leadership Personnel (84.029D).

This statutory priority supports projects that support leadership activities such as: (a) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities; or (b) providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673 (f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under Parts B and C of the Act, if the purpose of the project is to assist personnel in obtaining a degree;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Meet State and professionally-recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining a degree; and

(d) Ensure that individuals who receive a scholarship under the proposed project will subsequently perform work related to their preparation for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations to be issued by the Secretary.

The application requirement described in paragraph (d) is required by section 673(h)(2) of the Act (20 U.S.C. 1474(h)(2)). Because this provision was added to the Act during the recent reauthorization, the Secretary has not had the opportunity to promulgate regulations, but expects to do so before grant awards are made. In order for an applicant to provide the assurances required by statute, the applicant must, at a minimum, describe: (1) How it will notify trainees of the work or repay requirement; and (2) How it will notify trainees when the regulations are finalized. The Secretary encourages applicants to award stipends and scholarships that last at least for one-year. By having at least one year stipends and scholarships, it would be less likely that any trainee would enter work or repay status before the regulations are in effect.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

A project's budget must include funds to attend a two-day Project Director's meeting to be held in Washington, DC each year of the project.

Invitational Priorities

Within Absolute Priority 2 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects designed to foster successful coordination between special education and regular education teachers, administrators, related services personnel, infant intervention specialists, and parents.

(b) Projects that coordinate their professional development programs for regular and special education personnel.

(c) Projects that include recruitment of leadership personnel from groups that are underrepresented, including individuals with disabilities, in educational leadership positions.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $225,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 40 double-spaced 8½×11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 3— Preparation of Personnel in Minority Institutions (84.029E).

This statutory priority supports awards to institutions of higher education whose minority student enrollment is at least 25 percent, including Historically Black Colleges and Universities, for the purposes of preparing personnel to work with children with disabilities. Awards must be made consistent with the objectives in section 673(a) of the Act.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673 (f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive system of personnel development under Parts B and C of the Act.

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel; and

(e) Ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations to be issued by the Secretary.

The application requirement described in paragraph (e) is required by section 673(h)(1) of the Act (20 U.S.C. 1474(h)(1)). Because this provision was added to the Act during the recent reauthorization, the Secretary has not had the opportunity to promulgate regulations, but expects to do so before grant awards are made. In order for an applicant to provide the assurances required by statute, the applicant must, at a minimum, describe: (1) How it will notify trainees of the work or repay requirement; and (2) How it will notify trainees when the regulations are finalized. The Secretary encourages applicants to award stipends and scholarships that last at least for one-

year. By having at least one-year stipends and scholarships, it would be less likely that any trainee would enter work or repay status before the regulations are in effect.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. See section 661(f)(1)(A) of the Act).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, DC each year of the project.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 40 double-spaced 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 673 of the Act.

Training and Information for Parents of Children With Disabilities (CFDA No. 84.029)

Purpose of Program: The purpose of this statutory priority is to ensure that children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services and in systemic-change activities.

Eligible Applicants: Parent organizations, as defined in section 682(g) of the Act.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) the selection criteria included in 34 CFR 316.22.

Supplementary Information: Under sections 682 (e)(1) and (e)(2), the Secretary is required to: (1) Make at least one award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval; and (2) select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State. If there is more than one parent center in a particular State, the Secretary expects that the parent center projects will coordinate activities to ensure the most effective assistance to parents in that State.

Priority: Under sections 661(e)(2) and 682 of the Act, and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under these competitions only those applications that meet this absolute priority:

Absolute Priority—Parent Training and Information Centers (84.029M).

Each parent training and information center funded under this absolute priority must satisfy the following requirements contained in Section 682(b)and (c) of the Act—

(1) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

(2) Assist parents to understand the availability of, and how to effectively use procedural safeguards under the Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in the Act;

(3) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(4) Assist parents to——

(A) Better understand the nature of their children's disabilities and their educational and developmental needs;

(B) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(C) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(D) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(E) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(F) Participate in school reform activities.

(5) In States where the State elects to contract with the parent training and information center, contract with the State education agencies to provide, consistent with sections 615(e)(2)(B) and (D) of the Act, individuals who meet with parents to explain the mediation process to them;

(6) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of the Act, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(7) Upon request from a Community Parent Resource Center, establish a cooperative partnership in accordance with section 683(b)(3) of the Act; and

(8) Annually report to the Secretary on——

(A) The number of parents to whom it provided information and training in the most recently concluded fiscal year, and

(B) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

A parent training and information center that receives assistance under this absolute priority may also conduct the following activities——

(1) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(2) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as included under section 615(m) of the Act; and

(3) Assist parents of children with disabilities to be informed participants in the development and implementation of the State's State improvement plan under the Act.

An applicant must identify special efforts it will undertake——

(A) To ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(B) To work with community-based organizations.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of the Act).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, DC each year of the project.

Competitive Priority:

Within this absolute priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority:

Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. The Secretary awards 5 points to an application that meets the competitive priority relating to Empowerment Zones or Enterprise Communities published in the **Federal Register** on November 7, 1994 (59 FR 55544). These points are in addition to any points the application earns under the selection criteria for the program.

A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in an appendix to a notice published in the **Federal Register** on December 6, 1995 (60 FR 62699).

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $400,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 40 double-spaced 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 682 of the Act.

Technology And Media Services For Individuals With Disabilities [CFDA No. 84.026]

Purpose Of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program supports providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary, secondary, postsecondary, and graduate schools.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR 332.32.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under sections 661(e)(2) and 687 and 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Recorded Audio Cassettes for Visually and Print Disabled Students (84.026K). This absolute priority was published in the **Federal Register** on November 7, 1994 (59 FR 55544).

Background: This priority would support recording, producing, duplicating, and distributing 15/16 ips (inch per second) four-track cassette versions of textbooks and other educational reading materials for students (elementary, secondary, postsecondary and graduate) who are visually or print disabled. These cassette tapes will help provide equal educational opportunities to target students and lessen some of the barriers they face in the classroom.

Priority:

To be considered for funding under this priority, the project must—

(1) Handle all requests for materials, including confirmation of eligibility by disability;

(2) Ensure the project activities are conducted in compliance with section 121 of the Copyright Act, as amended.

(3) Record or duplicate the books on 15/16 ips (inch per second), four-track cassettes of one hour per track recording time. (Publishers must be provided rights to copies of the master tape and rights to market the cassettes as they see fit);

(4) Mail the cassettes on a free-loan, postage paid basis;

(5) Handle returned cassettes, preservative re-recording, and all other associated administrative and circulation functions; and

(6) To the extent that funds are not sufficient to meet the demand for free materials, place a priority on providing free materials that are not otherwise required to be provided by educational agencies or institutions.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of the Act).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, DC each year of the project.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $4,500,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application—Application Narrative, to no more than 40 double-spaced 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 687 of the Act.

Page Limit Requirements For All Applications: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. Applicants must limit the Part III—Application Narrative, to the specific page limit requirement listed under each priority. The Application Narrative must be double-spaced 8½ × 11" pages (on one side only) with one inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers

are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Ingergovernmental Review

Except for the Research and Innovation to Improve Services and Results for Children with Disabilities, all other programs in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 1998

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)[1]	Page limit[2]	Estimated number of awards
84.023C Field-Initiated Research Projects	08/08/97	10/01/97		$180,000	50	14
84.023B Student-Initiated Research Projects	8/08/97	2/06/98		20,000	25	12
84.023N Initial Career Awards	8/08/97	10/01/97		75,000	30	4
84.029A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities	8/08/97	10/01/97	12/01/97	300,000	40	16
84.029D Preparation of Leadership Personnel	8/08/97	9/26/97	11/25/97	225,000	40	6
84.029E Preparation of Personnel in Minority Institutions	8/8/97	9/26/97	11/25/97	200,000	40	16
84.029M Parent Training and Information Centers	8/08/97	10/17/97	12/14/97	400,000	40	13
84.026K Recorded Audio Cassettes for Visually and Print Disabled Students	8/08/97	9/12/97	11/10/97	4,500,000	40	1

[1] The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

[2] Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at Gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Dated: July 30, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–20454 Filed 8–1–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
August 4, 1997

Part III

Department of the Treasury
Office of Comptroller of the Currency
12 CFR Parts 3 and 6

Federal Reserve System
12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation
12 CFR Part 325

Department of the Treasury
Office of Thrift Supervision
12 CFR Parts 565 and 567

Capital; Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Servicing Assets; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 6

[Docket No. 97–15]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0976]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC07

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 565 and 567

[Docket No. 97–67]

RIN 1550–AB11

Capital; Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Servicing Assets

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision, (OTS) (collectively, the Agencies) propose to amend their capital adequacy standards for banks, bank holding companies, and savings associations (banking organizations) to address the treatment of servicing assets on both mortgage assets and financial assets other than mortgages (non-mortgages). This proposed rule was developed in response to a recent Financial Accounting Standards Board (FASB) accounting standard that affects servicing assets; that is, Statement of Financial Accounting Standards No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" (FAS 125), issued in June 1996, which superseded Statement of Financial Accounting Standards No. 122, "Accounting for Mortgage Servicing Rights" (FAS 122), issued in May 1995. Under this proposed rule, mortgage servicing assets included in regulatory capital would continue to be subject to certain prudential limitations. However, the limitation on the amount of mortgage servicing assets (and purchased credit card relationships) that can be recognized as a percent of Tier 1 capital would be increased from 50 to 100 percent. Also, all non-mortgage servicing assets would be fully deducted from Tier 1 capital. The Agencies are requesting comment on the regulatory capital limitations that are being proposed for servicing assets and on whether any interest-only strips receivable should be subject to the same regulatory capital limitations as servicing assets.

DATES: Comments must be received on or before October 3, 1997.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the Agencies. All comments will be shared among the Agencies.

OCC: Written comments should be submitted to Docket No. 97–15, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

Board: Comments should refer to Docket No. R–0976, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FDIC: Written comments shall be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 97–67. These submissions may be hand-delivered to 1700 G Street, N.W. between 9 a.m. and 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Gene Green, Deputy Chief Accountant (202/874–5180); Roger Tufts, Senior Economic Adviser, or Tom Rollo, National Bank Examiner, Capital Policy Division (202/874–5070); Mitchell Stengel, Senior Financial Economist, Risk Analysis Division (202/874–5431); Saumya Bhavsar, Attorney or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board: Arleen Lustig, Supervisory Financial Analyst (202/452–2987), Arthur W. Lindo, Supervisory Financial Analyst, (202/452–2695) or Thomas R. Boemio, Senior Supervisory Financial Analyst, (202/452–2982), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Marc J. Goldstom, Counsel, (202/898–8807), Legal Division.

OTS: John F. Connolly, Senior Program Manager for Capital Policy, Supervision Policy Division (202/906–6465), Christine Smith, Capital and Accounting Policy Analyst, (202/906–5740), Timothy J. Stier, Chief Accountant, (202/906–5699),

Accounting Policy Division, or Vern McKinley, Attorney, Regulations and Legislation Division (202/906–6241), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Capital Treatment of Mortgage Servicing Rights Pre-FAS 122

Prior to the issuance of FAS 122, intangible assets generally were deducted from capital in determining the amount of Tier 1 capital under the Agencies' regulatory capital rules.[1] However, limited amounts of purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs) were allowed in Tier 1 capital.[2] The aggregate amount of PMSRs and PCCRs that could be recognized for regulatory capital purposes could not exceed 50 percent of Tier 1 capital, with PCCRs subject to a further sublimit of 25 percent of Tier 1 capital. In addition, PMSRs and PCCRs were each subject to a 10 percent "haircut" that permitted only the lower of book value or 90 percent of fair market value to be included in Tier 1 capital. This haircut is required for PMSRs under section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828 *note*) (December 19, 1991)).

The regulatory capital treatment of servicing rights prior to the issuance of FAS 122 specified a treatment for PMSRs but not for originated mortgage servicing rights (OMSRs) or servicing rights on loans other than mortgages because generally accepted accounting principles (GAAP), at that time, did not permit institutions to book OMSRs nor did it generally allow institutions to book servicing rights on other assets. Furthermore, GAAP based the accounting for servicing rights on a distinction between normal servicing fees and excess servicing fees.[3] Although GAAP permitted excess servicing fees receivable (ESFRs) to be recognized as assets, for regulatory reporting purposes, banks generally were allowed to book only ESFRs on first lien, one-to four-family residential mortgages. The Agencies did not allow banks to book ESFRs on any other loans and, thus, these ESFRs were also effectively excluded from capital for regulatory reporting and regulatory capital purposes.[4]

FAS 122 and the Interim Rule

In May 1995, FASB issued FAS 122, which eliminated the GAAP distinction between OMSRs and PMSRs and required that these assets, together known as mortgage servicing rights (MSRs), be treated as a single asset for financial statement purposes, regardless of how the servicing rights were acquired. Under FAS 122, OMSRs and PMSRs are treated the same for reporting, valuation, and disclosure purposes.[5] The GAAP accounting treatment of ESFRs was not changed by FAS 122.

The Agencies adopted the FAS 122 standard for regulatory reporting purposes and then issued an interim rule on the regulatory capital treatment of MSRs (60 FR 39226, August 1, 1995), with a request for public comment. The interim rule, which became effective upon publication, amended the Agencies' capital adequacy standards to treat OMSRs in the same manner as PMSRs for regulatory capital purposes. Under the interim rule, the total of all MSRs (i.e., PMSRs and OMSRs), when combined with PCCRs, that can be included in regulatory capital cannot exceed 50 percent of Tier 1 capital. In addition, the interim rule extended the 10 percent haircut to all MSRs. The interim rule did not amend any other elements of the Agencies' capital rules.[6]

A majority of the commenters opposed the interim rule's capital limitations. Several commenters stated that the capital limitations ignored the increased marketability of MSRs, while others asserted that FAS 122's valuation and impairment requirements for MSRs were conservative, thereby providing safeguards against the risks associated with these assets. They believed that FAS 122's stringent valuation and impairment standards (lower of cost or market [LOCOM] on a stratum-by-stratum basis) precluded the need for arbitrary regulatory capital limits. In addition, while acknowledging that the 10 percent haircut is required by statute for PMSRs, commenters advocated a legislative change to eliminate it. If capital limitations on MSRs are retained, most commenters agreed that disallowed MSRs, i.e., those that exceeded 50 percent of Tier 1 capital, should be deducted from Tier 1 capital on a basis that is net of any associated deferred tax liability.

FAS 125

In June 1996, FASB issued FAS 125, which became effective for all transfers and servicing of financial assets on or after January 1, 1997. FAS 125 requires the recording of servicing on all financial assets that are serviced for others, including loans other than mortgages.[7]

FAS 125 eliminates the distinction between normal servicing fees and excess servicing fees and reclassifies these cash flows into two new types of assets: (a) Servicing assets, which are measured based on contractually specified servicing fees; and (b) interest-only (I/O) strips receivable, which reflect rights to future interest income from the serviced assets in excess of the contractually specified servicing fees. In addition, FAS 125 requires I/O strips and other financial assets that can be contractually prepaid or otherwise settled in such a way that the holder would not recover substantially all of its recorded investment (including loans, other receivables, and retained interests in securitizations) to be measured at fair value like debt securities that are classified as available-for-sale or trading securities under FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FAS 115).

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[1] For OTS purposes, Tier 1 capital is the same as core capital.

[2] Servicing rights are the contractual obligations undertaken by an institution to provide servicing for loans owned by others, typically for a fee. PMSRs are mortgage servicing rights that have been purchased from other parties. The purchaser is not the originator of the mortgage. Originated mortgage servicing rights, on the other hand, generally represent the servicing rights acquired when an institution originates mortgage loans and subsequently sells the loans but retains the servicing rights. Under the accounting standards that were in effect prior to FAS 122, mortgage servicing rights were characterized as intangible assets.

[3] A normal servicing fee was defined as a servicing fee that was representative of servicing fees most commonly used in comparable servicing agreements covering similar types of loans. Excess servicing fees arose only when a banking organization sold loans but retained the servicing and received a servicing fee that was in excess of a normal servicing fee. Excess servicing fees receivable were the present value of the excess servicing fees and were reported on the institution's balance sheet. GAAP continued to differentiate between normal and excess servicing fees until FAS 125 was implemented in January 1997.

[4] Bank holding companies and thrift institutions, however, were allowed to report ESFRs for regulatory reporting purposes and recognize all ESFRs in capital in accordance with existing GAAP.

[5] Among other things, FAS 122 imposed valuation and impairment criteria, based on the stratification of MSRs by their predominant risk characteristics. In addition, FAS 122 eliminated the intangible asset reference that prior GAAP applied to MSRs and stated that the characterization of MSRs as either intangible or tangible was unnecessary because similar characterizations are not applied to most other assets.

[6] Thus, PCCRs continued to be subject to the 25 percent of Tier 1 capital sublimit.

[7] In a press release issued on December 18, 1996, the Federal Financial Institutions Examination Council (FFIEC) issued interim guidance for the regulatory capital treatment of servicing assets under the Agencies' existing capital standards, which, after the effective date of FAS 125, will remain in effect until the Agencies issue a final rule on servicing assets.

Under FAS 125, organizations are required to recognize separate servicing assets (or liabilities) for the contractual obligation to service financial assets (e.g., mortgage loans, credit card receivables) that the entity has either sold or securitized with servicing retained. In addition, servicing assets (or liabilities) that are purchased (or assumed) as part of a separate transaction must also be recognized. However, no servicing asset (or liability) need be recognized when an organization securitizes assets, retains all of the resulting securities, and classifies the securities as held-to-maturity in accordance with FAS 115.

Under FAS 125, the existence of a servicing asset (or liability) is based on revenues a servicer would receive for performing the servicing. A servicing asset is recorded for a contract to service financial assets under which the estimated future revenues from contractually specified servicing fees, late charges, and other ancillary revenues (such as "float") are expected to more than adequately compensate the servicer for performing the servicing.[8] However, amounts representing rights to future interest income from serviced assets in excess of contractually specified servicing fees are not treated as servicing assets under FAS 125 since the right to this excess future interest income does not depend on the servicing work being satisfactorily performed and remaining with the servicer. Rather, these amounts are treated as financial assets, effectively, I/O strips receivable.

FAS 125 also adopts the valuation approach established by FAS 122 for determining the impairment of mortgage servicing assets (MSAs) and extends this approach to all other servicing assets, i.e., servicing assets on financial assets other than mortgages.

Proposed Amendments to the Capital Adequacy Standards

Overview

The Agencies are proposing to increase the amount of MSAs that can be recognized for regulatory capital purposes.[9] However, under this proposal, servicing assets on financial assets other than mortgages would continue to be deducted from Tier 1 capital. The Agencies are also seeking comment on whether I/O strips receivable that are not in the form of a security (whether held by the servicer or purchased from another organization) should be subject to the capital limitations imposed on servicing assets.

In this proposal, consistent with the interim capital guidance announced by the FFIEC in its December 1996 press release, the Agencies have chosen to use FAS 125 terminology when referring to servicing assets and financial assets in the belief that the adoption of the same terms for regulatory purposes would reduce the burden of having to maintain two sets of definitions—one for capital purposes and another for financial reporting purposes.[10]

Capital Limitation for Mortgage Servicing Assets

This proposal would subject all MSAs to a 100 percent of Tier 1 capital limitation and to a 10 percent of fair value haircut.[11] The 10 percent haircut applied to all MSAs imposes some safeguards on the amount of MSAs that can be included in Tier 1 capital calculations and, notwithstanding the valuation and impairment standards in FAS 122 and FAS 125, provides a greater level of supervisory comfort that addresses concerns about the risks (e.g., these assets are potentially volatile due to interest rate and prepayment risk) involved in holding these assets.[12]

The Agencies propose to retain a capital limitation on MSAs based on a percentage of Tier 1 capital to minimize banking organizations' reliance on these MSAs as part of the organizations' regulatory capital base. Excessive concentrations in these assets could potentially have an adverse impact on bank capital. The Agencies, however, propose to increase the capital limitation so that the amount of MSAs, when combined with PCCRs, that can be included in capital can equal no more than 100 percent of Tier 1 capital. The Agencies believe that a higher limit is more reasonable in light of the more specific accounting guidance in FAS 125 for the valuation and impairment of servicing assets. Moreover, the Agencies believe that some banking organizations will exceed the current 50 percent of Tier 1 capital limitation due only to changes in the accounting for servicing contracts brought about by FAS 122 and FAS 125.

Capital Treatment of Servicing Assets on Financial Assets Other Than Mortgages (Non-Mortgage Servicing Assets)

The Agencies propose to deduct from Tier 1 capital all non-mortgage servicing assets.[13] Although the Agencies recognize that the markets for servicing assets for some types of financial assets other than mortgages are growing, these markets are not as developed as the mortgage servicing market. Therefore, the Agencies propose to fully deduct non-mortgage servicing assets from capital because of concerns that the markets for these assets may not yet be of sufficient depth to provide liquidity for these assets. In addition, the Agencies are uncertain whether the fair values of these servicing assets can be determined with a high degree of reliability and predictability. Therefore, at this time, the Agencies propose to exclude these assets from Tier 1 capital.[14]

Summary of Proposed Capital Amendment

The Agencies are proposing two alternatives (alternative A and alternative B), which are described below, to revise their capital adequacy standards for servicing assets. These alternatives provide different treatments of I/O strips receivable. Moreover, the proposed alternatives do not reflect all deductions (e.g., the disallowed amount of deferred tax assets and net unrealized losses on available-for-sale equity

[8] FAS 125 defines contractually specified servicing fees as all amounts that, per contract, are due to the servicer in exchange for servicing a financial asset and would no longer be received by a servicer if the beneficial owners of the serviced assets or their trustees or agents were to shift the servicing to another servicer.

[9] For regulatory capital purposes, a mortgage servicing asset is a servicing asset that results from a contract to service mortgages (as defined in the Reports of Condition and Income for commercial banks and FDIC-supervised savings banks, Thrift Financial Report (TFR) for savings associations, and Consolidated Financial Statements (FR Y–9C) for bank holding companies).

[10] The Agencies' regulatory reports (Reports of Condition and Income for commercial banks and FDIC-supervised savings banks, Thrift Financial Report (TFR) for savings associations, and Consolidated Financial Statements (FR Y–9C) for bank holding companies) also reflect FAS 125 definitions for the reporting of servicing assets beginning with the first quarter of 1997.

[11] PCCRs would also continue to be subject to the 10 percent of fair value haircut.

[12] For purposes of determining the amount of servicing assets on financial assets (mortgage loans and other financial assets) that would be deducted (or disallowed) under this proposal, organizations may choose to reduce their otherwise disallowed servicing assets by the amount of any associated deferred tax liability. Any deferred tax liability used in this manner would not be available for the organization to use in determining the amount of net deferred tax assets that may be included for purposes of Tier 1 capital calculations.

[13] Originated servicing rights on financial assets other than mortgages were not booked as balance sheet assets under pre-FAS 125 GAAP. However, for regulatory reporting purposes, banks prior to 1997 were permitted to indirectly recognize ESFRs on certain government-guaranteed small business loans, and thrifts and bank holding companies booked ESFRs on financial assets other than mortgages in accordance with GAAP. Under FAS 125, these ESFRs have been reclassified as either servicing assets or I/O strips receivable, depending on whether the assets are part of the "contractually specified servicing fee," as that term is defined in FAS 125.

[14] See footnote 12.

securities with readily determinable fair values) that are required when organizations calculate their Tier 1 capital ratios. The regulatory capital limitations under this proposal can be summarized as follows:

(a) Servicing assets and PCCRs that are includable in capital are each subject to a 90 percent of fair value limitation (also known as a "10 percent haircut").[15]

(b) MSAs and PCCRs must be less than or equal to 100% of Tier 1 capital[16]

(c) PCCRs must be less than or equal to 25% of Tier 1 capital.

(d) Non-mortgage servicing assets and all intangible assets (other than qualifying PCCRs) must be deducted from Tier 1 capital.

Under alternative A, I/O strips (whether or not in the form of securities) would not be subject to any regulatory capital limit. Under alternative B, I/O strips receivable not in security form (whether held by the servicer or purchased from another organization) would be subject to the same capital limitation that is applied to the corresponding type of servicing assets. That is, if the I/O strips receivable are related to mortgages, they would be combined with MSAs and the combined amount would be subject to the 100 percent of Tier 1 capital limitation; if the I/O strips are related to financial assets other than mortgages, they would be deducted from Tier 1 capital.[17] Furthermore, the I/O strips receivable subject to the Tier 1 capital limitation would also be subject to the 10 percent haircut. In all other respects, alternatives A and B are identical. The proposed rules attached to this document reflect alternative A.

The Agencies are requesting public comment on whether to adopt alternative A or B for regulatory capital purposes. The Agencies also are seeking comment on whether to extend the capital limitation imposed on servicing assets (mortgage and non-mortgage) to include certain other non-security financial instruments, such as loans, other receivables, or other retained interests in securitizations, that can be contractually prepaid or otherwise settled in such a way that the holder would not recover substantially all of its recorded investment.

Some reasons in support of amending the capital adequacy standards to reflect alternative A, which would not subject I/O strips receivable to a Tier 1 capital limitation, are:

(1) I/O strips receivable not in security form are similar in economic substance to I/O strip securities. These I/O strips receivable should be treated in a manner consistent with the manner in which the Agencies treat I/O strip securities and not be subject to capital limitations.[18] Moreover, because there is insufficient data on these new financial assets, the Agencies should not, at this time, impose capital limits on these new financial assets. Rather, the Agencies should let the market develop before assessing whether any regulatory limitations are warranted.

(2) Certain I/O strips receivable on credit card receivables would likely be subject to a risk-based capital charge under the recourse rules established by the Agencies because these I/O strips receivable, which generally act as credit enhancements for the credit card asset-backed securities sold, would function as recourse. Thus, the risk-based capital rules for "assets sold with recourse" would apply to these I/O strips receivable.

(3) Under FAS 125, the cash flows underlying the I/O strips receivable not in security form actually possess characteristics that are more similar to I/O strip securities than to ESFRs because the holder of a non-security I/O strip receivable retains the rights to the I/O strip cash flows *even if* the underlying servicing (and the related servicing asset) is shifted away from the servicer (if, for example, the servicer fails to perform in accordance with the servicing contract). Thus, I/O strips receivable not in security form should be treated similarly to I/O strip securities, which are not subject to regulatory capital limitations.

(4) The amount of I/O strips receivable recognized by banking organizations may be limited. For example, the discipline imposed by the well-developed mortgage markets may minimize the amounts retained by the servicers above the contractually specified servicing fee amount.

Some reasons in support of amending the capital adequacy standards to reflect alternative B, which limits the amount of I/O strips receivable not in security form that can be included in Tier 1 capital, are:

(1) I/O strips receivable not in security form are not rated and are not registered. Rather, they are relatively new financial assets, which are recognized on the balance sheet in response to the recently issued FAS 125, and for which an active, liquid market does not currently exist. In contrast, I/O strips receivable that are registered securities have an identifiable market and are readily salable. Since the market for these newly-created I/O strips receivable is not currently well-developed, accurate, dependable information on the fair value of such assets may not be readily available or may be difficult to ascertain.

(2) I/O strips receivable not in security form arising from servicing activities should receive a no less restrictive capital treatment than the treatment afforded to the servicing asset itself because servicing assets and the I/O strips receivable both arise from the same activity and are subject to similar prepayment risk.

(3) If I/O strips receivable retained by the servicer are not subject to the same capital limitation as their related servicing assets, banking organizations may be inclined to avoid capital limitations by negotiating contracts that minimize contractually specified servicing fees, thereby enabling them to classify more of the cash flows as I/O strips receivable. This would understate the servicing assets and, thus, minimize the effectiveness of any capital limitation.

(4) The economic substance of servicing transactions remains unchanged. Under FAS 125, the cash flows of these transactions have simply been reclassified into new assets such as I/O strips receivable. The risks associated with the servicing assets and the I/O strips receivable have not changed.

Tangible Equity

The definition of tangible equity found in each Agency's regulation for Prompt Corrective Action would be revised to conform to the changes made in the proposed rule, i.e., the term "mortgage servicing rights" would be renamed "mortgage servicing assets" to reflect the FAS 125 conceptual changes for measuring servicing. No other

[15] If some or all types of non-mortgage servicing assets are includable in capital in the final rule, they would most likely be subject to the 90 percent of fair value limitation.

[16] Amounts of MSAs and PCCRs in excess of the amounts allowable must be deducted from Tier 1 capital.

[17] Under either alternative A or B, I/O strips that take the form of mortgage-backed securities are subject to the provisions of the Agencies' Supervisory Policy Statement on Securities Activities (57 FR 4029, February 3, 1992). They are not, however, subject to any Tier 1 capital limitations. I/O strips receivable that arise in sales and securitizations of assets, which use this receivable as a credit enhancement, are considered asset sales with recourse under the Agencies' risk-based capital standards. Such I/O strips would be treated like other recourse obligations under the Agencies' capital rules and would not be subject to the capital limitations for servicing assets.

[18] I/O strips from mortgage-backed securities that are currently held by banks and thrifts are subject to the "high-risk test" in the Agencies" Supervisory Policy Statement on Securities Activities (57 FR 4029, February 3, 1992). That policy statement has, in the past, limited a depository institution's ability to hold I/Os because they typically are "high-risk" mortgage securities.

changes to the definition of tangible equity are proposed at this time.[19]

Request for Public Comment

The Agencies invite comments on all aspects of these proposed changes. In particular, the Agencies seek comments from interested parties on the following:

1. How readily determinable are fair values of mortgage servicing assets and non-mortgage servicing assets (e.g., credit card servicing assets)? Please describe the existing methodologies and market mechanisms used by your organization for determining fair values for servicing assets.

2. Given the supervisory concerns regarding the reliability of the valuation of servicing assets and the potential volatility in the fair value of these assets, should limits be retained on the amount of servicing assets that is recognized for regulatory capital purposes?

a. What aggregate limit, if any, should apply to the maximum amount of mortgage servicing assets and PCCRs that may be recognized for regulatory capital purposes?

b. To what extent should servicing assets on non-mortgage financial assets be included in regulatory capital?

c. Should non-mortgage servicing assets and I/O strips receivable (if treated similarly to non-mortgage servicing assets) be subject to the same 25 percent sublimit and haircut as PCCRs?

3. What types of assets should be subject to regulatory capital limitations under this rule?

a. Should I/O strips receivable not in security form be subject to the same capital limitations as servicing assets?

b. If alternative B is adopted, should the definition of I/O strips receivable that are subject to capital limitations be expanded to include all financial assets not in security form that can be contractually prepaid or otherwise settled in such a way that the holder would not recover substantially all of its recorded investment as described under FAS 125? These assets would include loans, other receivables, and other retained interests in securitizations that meet this condition. Please provide supporting information on the nature of these non-security financial assets with significant prepayment risk.

4. For what types of financial assets (other than loans secured by first liens on 1- to 4-family residential properties) does your organization currently book servicing assets and/or I/O strips receivable? How will this change in the future for your organization?

5. In light of FAS 125 and this proposal, what should be the capital treatment for amounts previously designated as ESFRs for financial reporting purposes (if your organization still maintains this breakdown for income tax or other purposes) held by banking organizations?

6. What effect, if any, should efforts to hedge the MSA portfolio have on the MSA regulatory capital limitations?

7. Should servicing assets that are disallowed for regulatory capital purposes be deducted on a basis that is net of any associated deferred tax liability?

Regulatory Flexibility Act Analysis

OCC Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The adoption of this proposal would reduce the regulatory burden of small businesses by aligning the terminology in the capital adequacy standards more closely to newly-issued generally accepted accounting principles and by relaxing the capital limitation on mortgage servicing assets. The economic impact of this proposed rule on banks, regardless of size, is expected to be minimal.

Board Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The effect of this proposal would be to reduce the regulatory burden of banks and bank holding companies by aligning the terminology in the capital adequacy guidelines more closely to newly-issued generally accepted accounting principles and by relaxing the capital limitation on mortgage servicing assets. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

FDIC Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The amendment concerns capital requirements for servicing assets held by depository institutions of any size. The effect of the proposal would be to reduce regulatory burden on depository institutions (including small businesses) by aligning the terminology used in the capital adequacy guidelines more closely to newly-issued generally accepted accounting principles and by relaxing the capital limitation on mortgage servicing assets. The economic impact of this proposed rule on banks, regardless of size, is expected to be minimal.

OTS Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The amendment concerns capital requirements for servicing assets which may be entered into by depository institutions of any size. The effect of the proposal would be to reduce regulatory burden on depository institutions by aligning the terminology used in the capital adequacy standards more closely to newly-issued generally accepted accounting principles and by relaxing the capital limitation on mortgage servicing assets.

Paperwork Reduction Act

The Agencies have determined that this proposal would not increase the regulatory paperwork of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

OCC and OTS Executive Order 12866 Statement

The Comptroller of the Currency and the Director of the OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

OCC and OTS Unfunded Mandates Act Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act)

[19] The OTS is proposing to make an additional technical clarification to its definition of tangible equity in 12 CFR 565.2(f) that would conform the OTS rule to this proposal and eliminate the double deduction of disallowed mortgage servicing assets.

requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed amendment to the capital adequacy standards would relax the capital limitation on mortgage servicing assets and PCCRs. Further, the proposed amendment moves toward greater consistency with FAS 125 in an effort to reduce the burden of complying with two different standards. Thus, no additional cost of $100 million or more, to State, local, or tribal governments or to the private sector will result from this proposed rule. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement nor specifically addressed any regulatory alternatives.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 6

National banks, Prompt corrective action.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set forth in the joint preamble, parts 3 and 6 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

§ 3.3 [Amended]

2. Section 3.3 is amended by removing the words "mortgage servicing rights" in the first sentence and adding "mortgage servicing assets" in their place.

3. Section 3.100 is amended by revising paragraph (c)(2) and by removing the words "mortgage servicing rights" in paragraphs (e)(7) and (g)(2) and adding "mortgage servicing assets" in their place, to read as follows:

§ 3.100 Capital and surplus.

* * * * *

(c) * * *

(2) Mortgage servicing assets;

* * * * *

4. In appendix A to part 3, paragraph (c)(14) of section 1 is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(14) *Intangible assets* include mortgage servicing assets, purchased credit card relationships (servicing rights), goodwill, favorable leaseholds, and core deposit value.

* * * * *

5. In appendix A to part 3, in section 2, paragraphs (c) introductory text, (c)(1), (c)(2), and the heading of paragraph (c)(3)(i) are revised to read as follows:

* * * * *

Section 2. Components of Capital.

* * * * *

(c) *Deductions From Capital.* The following items are deducted from the appropriate portion of a national bank's capital base when calculating its risk-based capital ratio.

(1) *Deductions from Tier 1 capital.* The following items are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made:

(i) All goodwill subject to the transition rules contained in section 4(a)(1)(ii) of this appendix A;

(ii) Non-mortgage servicing assets;

(iii) Other intangible assets, except as provided in section 2(c)(2) of this appendix A; and

(iv) Deferred tax assets, except as provided in section 2(c)(3) of this appendix A, that are dependent upon future taxable income, which exceed the lesser of either:

(A) The amount of deferred tax assets that the bank could reasonably expect to realize within one year of the quarter-end Call Report, based on its estimate of future taxable income for that year; or

(B) 10% of Tier 1 capital, net of goodwill and all intangible assets other than mortgage servicing assets and purchased credit card relationships, and before any disallowed deferred tax assets are deducted.

(2) *Qualifying intangible assets.* Subject to the following conditions, mortgage servicing assets and purchased credit card relationships need not be deducted from Tier 1 capital:

(i) The total of all intangible assets included in Tier 1 capital is limited to 100 percent of Tier 1 capital, of which no more than 25 percent of Tier 1 capital can consist of purchased credit card relationships. Calculation of these limitations must be based on Tier 1 capital net of goodwill and other disallowed intangible assets.

(ii) Banks must value each intangible asset included in Tier 1 capital at least quarterly at the lesser of:

(A) 90 percent of the fair value of each asset, determined in accordance with paragraph (c)(2)(iii) of this section; or

(B) 100 percent of the remaining unamortized book value.

(iii) The quarterly determination of the current fair value of the intangible asset must include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates.

(3) *Deferred tax assets*—(i) *Net unrealized gains and losses on available-for-sale securities.* * * *

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

1. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o.

2. Section 6.2(g) is revised to read as follows:

§ 6.2 Definitions

* * * * *

(g) *Tangible equity* means the amount of Tier 1 capital elements in the OCC's Risk-Based Capital Guidelines (12 CFR part 3, appendix A) plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets

except mortgage servicing assets to the extent permitted in Tier 1 capital under 12 CFR part 3, appendix A, section 2(c)(2).

* * * * *

Dated: July 17, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78o–5, 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.41, as proposed to be renumbered from § 208.31 and revised at *62* FR 15291, is further amended by revising paragraph (f) to read as follows:

§ 208.41 Definitions for purposes of this subpart.

* * * * *

(f) *Tangible equity* means the amount of core capital elements as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing assets to the extent that the Board determines that mortgage servicing assets may be included in calculating the bank's Tier 1 capital.

* * * * *

3. In Appendix A to part 208, sections II.B.1.b.i. through II.B.1.b.v. are revised to read as follows:

Appendix a to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. ***

B. ***

1. *Goodwill and other intangible assets* ***

b. *Other intangible assets.* i. All servicing assets, including servicing assets on assets other than mortgages (i.e., non-mortgage servicing assets) are included in this Appendix A as identifiable intangible assets. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a bank's capital are readily marketable mortgage servicing assets and purchased credit card relationships. The total amount of these assets included in capital, in the aggregate, can not exceed 100 percent of Tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of Tier 1 capital.[14]

ii. For purposes of calculating these limitations on mortgage servicing assets and purchased credit card relationships, Tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets and purchased credit card relationships, regardless of the date acquired, but prior to the deduction of deferred tax assets.

iii. Banks must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets and purchased credit card relationships also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's intangible assets.

v. The amount of mortgage servicing assets and purchased credit card relationships that a bank may include in capital shall be the lesser of 90 percent of their fair value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions in the commercial bank Consolidated Reports of Condition and Income (Call Reports). If both the application of the limits on mortgage servicing assets and purchased credit card relationships and the adjustment of the balance sheet amount for these assets would result in an amount being deducted from capital, the bank would deduct only the greater of the two amounts from its core capital elements in determining Tier 1 capital.

* * * * *

4. In Appendix A to part 208, section II.B.4. is revised to read as follows:

* * * * *

II. * * *

B. * * *

4. *Deferred tax assets.* The amount of deferred tax assets that is dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a bank's capital may not exceed the lesser of (i) the amount of these deferred tax assets that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[20] or (ii) 10 percent of Tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining Tier 1 capital. For purposes of calculating the 10 percent limitation, Tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all other identifiable intangible assets other than mortgage servicing assets and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in Tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences, but, for banks that have a parent, this may not exceed the amount the bank could reasonably expect its parent to refund.

* * * * *

5. In Appendix B to part 208, section II.b. is revised to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A bank's Tier 1 leverage ratio is calculated by dividing its Tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of Tier 1 capital as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[2] As a general matter,

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[14] Amounts of mortgage servicing assets and purchased credit card relationships in excess of these limitations, as well as identifiable intangible assets, including core deposit intangibles, favorable leaseholds and non-mortgage servicing assets, are to be deducted from a bank's core capital elements in determining Tier 1 capital. However, identifiable intangible assets (other than mortgage servicing assets and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

[20] To determine the amount of expected deferred-tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating-loss carry-forwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include the estimated effect of tax-planning strategies that the organization expects to implement to realize net operating losses or tax-credit carry-forwards that would otherwise expire during the year. Institutions do not have to prepare a new 12-month projection each quarter. Rather, on interim report dates, institutions may use the future-taxable-income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

[2] Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital

average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing assets and purchased credit card relationships that in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of Appendix A of this part.[3]

* * * * *

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

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225, sections II.B.1.b.i. through II.B.1.b.v. are revised to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. *Goodwill and other intangible assets*

b. *Other intangible assets.* i. All servicing assets, including servicing assets on assets other than mortgages (i.e., non-mortgage servicing assets) are included in this Appendix A as identifiable intangible assets. The only types of identifiable intangible assets that may be included in, that is, not deducted from, an organization's capital are readily marketable mortgage servicing assets and purchased credit card relationships. The total amount of these assets included in capital, in the aggregate, can not exceed 100 percent of Tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of Tier 1 capital.[15]

ii. For purposes of calculating these limitations on mortgage servicing assets and purchased credit card relationships, Tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets and similar assets other than mortgage servicing assets and purchased credit card relationships, regardless of the date acquired, but prior to the deduction of deferred tax assets.

iii. Bank holding companies must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets and purchased credit card relationships also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of an organization's intangible assets or similar assets.

v. The amount of mortgage servicing assets and purchased credit card relationships that a bank holding company may include in capital shall be the lesser of 90 percent of their fair value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C Report). If both the application of the limits on mortgage servicing assets and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank holding company would deduct only the greater of the two amounts from its core capital elements in determining Tier 1 capital.

* * * * *

3. In Appendix A to part 225, section II.B.4. is revised to read as follows:

* * * * *

II. * * *

B. * * *

4. *Deferred tax assets.* The amount of deferred tax assets that is dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a banking organization's capital may not exceed the lesser of (i) the amount of these deferred tax assets that the banking organization is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[23] or (ii) 10 percent of Tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining Tier 1 capital. For purposes of calculating the 10 percent limitation, Tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in Tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carryback years or from future reversals of existing taxable temporary differences.

* * * * *

4. In Appendix D to part 225, section II.b. is revised to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A banking organization's Tier 1 leverage ratio is calculated by dividing its Tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of Tier 1 capital as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[3] As a general matter, average total consolidated

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excludes goodwill; amounts of mortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; purchased credit card relationships that exceed 25 percent of Tier 1 capital; other identifiable intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

[15] Amounts of mortgage servicing assets and purchased credit card relationships in excess of these limitations, as well as servicing assets on loans other than mortgages and all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from an organization's core capital elements in determining Tier 1 capital. However, identifiable intangible assets (other than mortgage servicing assets and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

[23] To determine the amount of expected deferred tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions do not have to prepare a new 12 month projection each quarter. Rather, on interim report dates, institutions may use the future taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; purchased credit card relationships that exceed 25 percent of Tier 1 capital; all other identifiable intangible assets (including non-mortgage servicing assets); and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets (including non-mortgage servicing assets); any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of Appendix A of this part.[4]

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 28, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation
12 CFR Capter III

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In § 325.2, paragraph (n) is revised to read as follows:

§ 325.2 Definitions.

* * * * *

(n) Mortgage servicing assets means those balance sheet assets (net of any related valuation allowances) that represent the rights to perform the servicing function for mortgage loans that have been securitized or are owned by others. Mortgage servicing assets must be amortized in proportion to, and over the period of, estimated net servicing income. For purposes of determining regulatory capital under this part, mortgage servicing assets will be recognized only to the extent that the rights meet the conditions, limitations, and restrictions described in § 325.5 (f).

* * * * *

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

§ 325.2 [Amended]

3. In § 325.2, paragraphs (s), (t), and (v) are amended by removing the words "mortgage servicing rights" and adding in their place the words "mortgage servicing assets" each time they appear.

4. In § 325.5, paragraph (f) is revised to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) *Treatment of mortgage servicing assets and credit card relationships.* For purposes of determining Tier 1 capital under this part, mortgage servicing assets and purchased credit card relationships will be deducted from assets and from equity capital to the extent that the mortgage servicing assets and purchased credit card relationships do not meet the conditions, limitations, and restrictions described in this section.

(1) *Valuation.* The fair value of mortgage servicing assets and purchased credit card relationships shall be estimated at least quarterly. The quarterly fair value estimate shall include adjustments for any significant changes in the original valuation assumptions, including changes in prepayment estimates or attrition rates. The FDIC in its discretion may require independent fair value estimates on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

(2) *Fair value limitation.* For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes), the balance sheet assets for mortgage servicing assets and purchased credit card relationships will each be reduced to an amount equal to the lesser of:

(i) 90 percent of the fair value of these assets, determined in accordance with paragraph (f)(1) of this section; or

(ii) 100 percent of the remaining unamortized book value of these assets (net of any related valuation allowances), determined in accordance with the instructions for the preparation of the Consolidated Reports of Income and Condition (Call Reports).

(3) *Tier 1 capital limitation.* The maximum allowable amount of mortgage servicing assets and purchased credit card relationships, in the aggregate, will be limited to the lesser of:

(i) 100 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, and any disallowed deferred tax assets; or

(ii) The amount of mortgage servicing assets and purchased credit card relationships, determined in accordance with paragraph (f)(2) of this section.

(4) *Tier 1 capital sublimit.* In addition to the aggregate limitation on mortgage servicing assets and purchased credit card relationships set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships, in the aggregate, will be limited to the lesser of:

(i) Twenty-five percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, and any disallowed deferred tax assets; or

(ii) The amount of purchased credit card relationships, determined in accordance with paragraph (f)(2) of this section.

* * * * *

§ 325.5 [Amended]

5. In § 325.5, paragraphs (g)(2)(i)(B) and (g)(5) are amended by removing the words "mortgage servicing rights" and adding in their place the words "mortgage servicing assets" each time they appear.

Appendix A to Part 325 [Amended]

6. In appendix A to part 325, the words "mortgage servicing rights" are removed and the words "mortgage servicing assets" are added each time they appear in section I.A.1., section I.B.(1) and footnote 8 to section I.B.(1), section II.C., and Table I—Definition of Qualifying Capital and footnote 2 to Table I.

Appendix B to Part 325 [Amended]

7. In appendix B to part 325, section IV.A. and footnote 1 to section IV. A. are amended by removing the words "mortgage servicing rights" and adding in their place the words "mortgage servicing assets" each time they appear.

By order of the Board of Directors.

Dated at Washington, D.C., this 22nd day of July, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision hereby proposes to amend 12 CFR, Chapter V, as set forth below:

PART 565—PROMPT CORRECTIVE ACTION

1. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

2. Section 565.2 is amended by revising paragraph (f) to read as follows:

§ 565.2 Definitions.

* * * * *

(f) *Tangible equity* means the amount of a savings association's core capital as computed in § 567.5(a) of this chapter plus the amount of its outstanding cumulative perpetual preferred stock (including related surplus), minus intangible assets as defined in § 567.1(m) of this chapter that have not been previously deducted in calculating core capital.

* * * * *

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follow:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (m) to read as follows:

§ 567.1 Definitions

* * * * *

(m) *Intangible assets.* The term intangible assets means assets considered to be intangible assets under generally accepted accounting principles. These assets include, but are not limited to, goodwill, favorable leaseholds, core deposit premiums, and purchased credit card relationships. Servicing assets are not intangible assets under this definition.

* * * * *

3. Section 567.5 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(2) * * *

(ii) Servicing assets that are not includable in tangible and core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

* * * * *

4. Section 567.6 is amended by revising paragraphs (a)(1)(iv)(L) and (a)(1)(iv)(M) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iv) * * *

(L) Mortgage servicing assets and intangible assets includable in core capital pursuant to § 567.12 of this part;

(M) Interest-only strips receivable;

* * * * *

5. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(1) Intangible assets, as defined in § 567.1(m) of this part, and servicing assets not includable in core and tangible capital pursuant to § 567.12 of this part.

* * * * *

6. Section 567.12 is amended by revising the section heading and paragraphs (a) through (c), paragraph (d) introductory text, and paragraphs (e) and (f) to read as follows:

§ 567.12 Intangible assets and servicing assets.

(a) *Scope.* This section prescribes the maximum amount of intangible assets and servicing assets that savings associations may include in calculating tangible and core capital.

(b) *Computation of core and tangible capital.* (1) Purchased credit card relationships may be included (that is, not deducted) in computing core capital in accordance with the restrictions in this section, but must be deducted in computing tangible capital.

(2) Mortgage servicing assets may be included in computing core and tangible capital, in accordance with the restrictions in this section.

(3) Non mortgage-related servicing assets are deducted in computing core and tangible capital.

(4) Intangible assets, as defined in § 567.1(m) of this part, other than purchased credit card relationships described in paragraph (a)(1) of this section and core deposit intangibles described in paragraph (g)(3) of this section, are deducted in computing tangible and core capital.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of assets subject to this section on a case-by-case basis or through the issuance of policy guidance. An independent market valuation, if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair value of assets subject to this section. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair value for assets subject to this section at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), purchased credit card relationships and mortgage servicing assets must be valued at the lesser of:

* * * * *

(e) *Core capital limitation—(1) Aggregate limit.* The maximum aggregate amount of mortgage servicing assets and purchased credit card relationships that may be included in core capital shall be limited to the lesser of:

(i) 100 percent of the amount of core capital computed before the deduction of any disallowed mortgage servicing assets and purchased credit card relationships; or

(ii) The amount of mortgage servicing assets and purchased credit card relationships determined in accordance with paragraph (d) of this section.

(2) *Reduction by deferred tax liability.* Associations may elect to reduce the amount of their disallowed (i.e., not includable in capital) mortgage servicing assets exceeding the 100 percent limit by the amount of any associated deferred tax liability.

(3) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation in paragraph (e)(1) of this section, a sublimit shall apply to purchased credit card relationships. The maximum allowable amount of such assets shall be limited to the lesser of:

(i) 25 percent of the amount of core capital computed before the deduction of any disallowed mortgage servicing assets and purchased credit card relationships; or

(ii) The amount of purchased credit card relationships determined in accordance with paragraph (d) of this section.

(f) *Tangible capital limitation.* The maximum amount of mortgage servicing assets that may be included in tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (e)(1) of this section.

* * * * *

Dated: July 7, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–20391 Filed 8–1–97; 8:45 am]

BILLING CODES: 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

federal register

Monday
August 4, 1997

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants: Corrections; Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AB26

Air Contaminants; Corrections

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Correcting amendments.

SUMMARY: This document makes corrections to the OSHA standard on Air Contaminants. Specifically, this document corrects typographical errors in the table containing limits for air contaminants and the table on mineral dusts.

EFFECTIVE DATE: September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3647, Washington, D.C. 20210, Telephone: 202–219–8148.

SUPPLEMENTARY INFORMATION:

Background

OSHA published revisions to its rule on Air Contaminants on June 30, 1993 (58 FR35338) in response to the Court of Appeals decision in *AFL–CIO* v. *OSHA*, 965 F.2d 962 (11th Circuit, 1992). Those revisions are currently printed in the Code of Federal Regulations, Air Contaminants Standard, 29 CFR 1910.1000, Tables Z–1, Z–2, and Z–3.

Need for Corrections

As published, the standard contains typographical errors which may prove to be misleading, and incorrect entries which are in need of clarification and correction. This document corrects these errors.

For one group of substances, Cyanides, OSHA inadvertently omitted the "x" notation in the "skin designation" column to indicate that the substance is absorbed through the skin.

For two substances, Endosulfan and Perlite (respirable and total dust), the entries and their corresponding PELs should be deleted. The entries, including their respective PELs, are a carryover from the 1989 Air Contaminants Standard which was vacated by the U.S. Court of Appeals, Eleventh Circuit. The substance Endosulfan was not listed in the air contaminant tables when OSHA adopted the consensus standards on May 29, 1971 (36 FR 10466) and consequently is not currently regulated. OSHA formerly regulated Perlite under the generic nuisance dust limits of 15 mg/m^3 total dust and 5 mg/m^3 respirable fraction. Consequently, Perlite is currently is currently regulated under the entry "particulates not otherwise regulated" which is the current nomenclature for what was formerly referred to as "nuisance dust."

The exposure limit for Uranium insoluble compounds is incorrectly listed as 0.05 mg/m^3. It should be listed as 0.25 mg/m^3.

The formula for the PEL for coal dust with less than 5% quartz (respirable fraction) is incorrectly listed as:

$$\frac{2.4\ mg/m^3}{\%\ SiO_2 + 2}$$

It should be 2.4 mg/m^3.

List of Subjects in 29 CFR Part 1910

Air contaminants, Chemicals, Hazardous substances, Occupational safety and health, Permissible exposure limits.

Accordingly, 29 CFR Part 1910 is corrected by making the following correcting amendments:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), of 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of Subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, or Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1200 also issued under 5 U.S.C. 553.

§ 1910.1000 [Corrected]

Table Z–1 [Corrected]

2. In § 1910.1000, table Z–1 is amended as follows:

a. In the entry for "Cyanides (as CN)", add an "x" in the "Skin designation" column.

b. In the entry for "1,2-Dibromo-3-chloropropane (CBCP); see 1910.1044", the parenthetical "(CBCP)" in the "Substance" column is revised to read "(DBCP)".

c. The entry for "Endosulfan" is removed.

d. The entries for "Perlite" are removed.

e. In the entry for "2,4,6-Trinitrophenyl; see Picric acid", the word "Trinitrophenyl" is revised to read "Trinitrophenol".

f. In the entry for "Uranium (as U), Insoluble compounds", the number "0.05" in the "mg/m^3" column is revised to read "0.25".

Table Z–3 [Corrected]

2. § 1910.1000, table Z–3 is amended in the entry for "Coal Dust: Respirable fraction less than 5% SiO_2", by revising

$$\frac{\text{"}2.4\ mg/m^{3\,e}\text{"}}{\%\ SiO_2 + 2}$$

in the "mg/m^3" column to read "2.4 $mg/m^{3\,e}$".

Signed at Washington, DC this 25th day of July, 1997.

Greg Watchman,

Acting Assistant Secretary.

[FR Doc. 97–20464 Filed 8–1–97; 8:45 am]

BILLING CODE 4510–26–M

federal register

Monday
August 4, 1997

Part V

Environmental Protection Agency

Raw and Processed Food Schedule for Pesticide Tolerance Reassessment; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300523; FRL–5734–6]

Raw and Processed Food Schedule for Pesticide Tolerance Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's schedule for reassessing tolerances for pesticide residues in or on raw and processed foods. Publication of this schedule meets the requirements of Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q)(3), as established by the Food Quality Protection Act of 1996. Under the new law, EPA is required to reassess all existing tolerances and exemptions from tolerances for both active and inert ingredients. EPA is directed to give priority review to pesticides that appear to present risk concerns based on current data. In reassessing tolerances, EPA must consider the aggregate exposure to the pesticide; cumulative effects from other pesticides with a common mode of toxicity; whether there is an increased susceptibility from exposure to the pesticide to infants and children; and whether the pesticide produces an effect in humans similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

ADDRESS: Written comments, although not required, may be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Comments must be identified by docket control number (OPP-300523). Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record.

Comments may be submitted electronically by following the instructions under Unit VI. No CBI should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703) 308-8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The FFDCA authorizes EPA to establish tolerances (maximum residue levels) or exemptions from the requirement of a tolerance, and to modify and revoke tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed food. Without a tolerance or exemption, food containing pesticide residues is considered to be adulterated and may not be legally moved in interstate commerce. Tolerance procedures are contained in 40 CFR parts 177 through 180; all tolerances and exemptions are listed in parts 180, 185, and 186. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

On August 3, 1996, the Food Quality Protection Act (FQPA) was signed into law. Effective upon signature, FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA. One new FFDCA provision established by FQPA requires the reassessment of all existing tolerances and exemptions from the requirement of a tolerance in a manner consistent with the requirements of the new law.

Prior to FQPA, EPA reassessed tolerances as part of its reregistration process for pesticides registered prior to November 1984. For pesticide chemicals registered after November 1984 (known as the post-1984 chemicals) and for newly registered pesticides, EPA has used the registration process to ensure that the best available information is used to assess the safety of tolerances and exemptions.

II. Regulatory Requirements of FFDCA

Section 408(q) of the FFDCA requires that EPA review within ten years all tolerances and exemptions established prior to the August 3, 1996 enactment of FQPA, giving priority to the review of those tolerances or exemptions that appear to pose the greatest risk to public health. In its review of these tolerances and exemptions, EPA must meet the following time table: 33 percent of applicable tolerances and exemptions must be reviewed by August 1999, 66 percent by August 2002, and 100 percent by August 2006. FQPA also requires that by August 3, 1997, EPA publish a schedule of its reassessment of these tolerances and exemptions. Today's notice satisfies that requirement. Although publication of this tolerance reassessment schedule is not a rulemaking and is not subject to judicial review, EPA welcomes responses to this schedule from interested parties and the general public. Please see part VI, "Effective Date and Public Response," for information on how to respond to this notice.

III. Tolerances and Exemptions Subject to Reassessment

At the time of FQPA's August 1996 enactment, there were 9,728 tolerances and exemptions for active and inert ingredients that are subject to the FQPA reassessment time table in section 408(q). Of the tolerances and exemptions for active ingredients subject to the reassessment schedule, 8,190 are tolerances and 712 are exemptions. Also subject to reassessment are 826 exemptions for inert ingredients.

IV. Tolerance Reassessment Program

All existing tolerances and exemptions will be reviewed in the course of the tolerance reassessment program, initially as part of the Agency's pesticide reregistration program and later as part of the registration renewal program. First, tolerance reassessment will occur as a part of the reregistration process. That is, tolerances and exemptions for a pesticide chemical subject to reregistration are reassessed at the time that the reregistration eligibility decision (RED) is completed for the pesticide. EPA will also reassess tolerances and exemptions associated with pesticides for which REDs were issued before FQPA's August 1996 enactment and therefore require tolerance reassessments conducted according to FQPA standards, pesticides that were registered after 1984 and therefore are not subject to reregistration, and food-use inert ingredients. In 2003, after completion of the reregistration program, tolerance reassessment will become an output of the registration renewal process.

A. Reassessment Considerations

In reassessing tolerances, FQPA requires that EPA consider, among other things, the best available data and information on the following:

- The aggregate exposure to the pesticide (including exposure from residential pesticide uses and drinking water).
- The cumulative effects from other pesticides sharing a common mechanism of toxicity.
- Whether there is an increased susceptibility from exposure to the pesticide to infants and children.
- Whether the pesticide produces an effect in humans similar to an effect produced by a naturally occurring estrogen, or other endocrine effects.

B. Tolerance Reassessment Priorities

In order to comply with FQPA reassessment priorities and reregistration scheduling requirements, EPA has divided the pesticides with tolerances and exemptions subject to the reassessment schedule into three groups. In general, tolerances and exemptions for Group 1 pesticides will be subject to reassessment first, followed by groups 2 and 3. While the actual reassessment of the tolerances and exemptions in these three groups may not correspond directly with the three FQPA reassessment deadlines of August 1999, August 2002, and August 2006, this grouping reflects the overall scheduling priorities for tolerance reassessment.

1. *Group 1*—i. *Risk- and hazard-based priorities*. EPA has placed into Group 1 those tolerances and exemptions associated with the following types of pesticides, which based on the best available information to date appear to pose the greatest risk to the public health:

(1) Pesticides of the organophosphate, carbamate, and organochlorine classes (it is EPA's intent to conduct tolerance reassessments for organophosphate pesticides in the first three years of the schedule).

(2) Pesticides that EPA has classified as probable human (groups B_1 and B_2) carcinogens, and possible human (group C) carcinogens for which EPA has quantified a cancer potency.

(3) High-hazard inert ingredients.

(4) Any pesticides that, based on the best available data at the time of scheduling, exceed their reference dose (RfD).

In making the determination as to which pesticides appear to pose the greatest risk to the public health, whenever possible EPA has taken into account exposure to infants, children, and other sensitive subpopulations.

ii. *Reregistration priorities*. Because EPA must, in addition to meeting the tolerance reassessment schedule, also complete the reregistration program by 2002, tolerance reassessments for those pesticides for which REDs were substantially complete prior to FQPA's enactment are also included in Group 1, even though the tolerances for these pesticides may not be among those that appear to pose the greatest risk to the public health. For the sake of completeness and for tracking purposes, those food-use pesticides for which REDs were issued after August 3, 1996 are also listed in Group 1, even though EPA has completed their FQPA tolerance reassessments.

iii. *Tolerance revocations*. EPA has also placed in Group 1 pesticides for which tolerances and exemptions are in the process of being proposed for revocation. These tolerances and exemptions are included in the total 9,728 tolerances and exemptions. In some cases, revocations reduce theoretical risk in dietary assessments where tolerance-level residues are used. This year, EPA has begun to issue a number of proposed rules to revoke over 1,000 tolerances and exemptions: one notice proposes to revoke tolerances and exemptions associated with pesticides for which all registrations have been canceled; a second notice proposes to revoke tolerances for uses that have been deleted from pesticide registrations; a third notice proposes to revoke tolerances for uses canceled in order to reduce theoretical risks to levels below the reference dose; a fourth notice, already issued, proposes to revoke tolerances for uses no longer considered to be significant livestock feed items; and several other notices propose to revoke tolerances for individual pesticides.

2. *Group 2*. Possible human carcinogens not included in Group 1 will be reassessed as part of Group 2. Because EPA intends to complete the reregistration program in 2002, tolerances and exemptions for all remaining pesticides subject to reregistration will also be reassessed as part of Group 2. Other pesticides have been placed into Group 2 based on scheduling considerations.

3. *Group 3*. EPA has placed in Group 3 the biological pesticides, as well as those inert ingredients referenced in 40 CFR part 180 that EPA has not identified as high-hazard inerts. Also in Group 3 are, as part of the registration renewal program, those post-1984 pesticides with tolerances and/or exemptions not yet reassessed under FQPA.

V. Tolerance Reassessment Schedule

This section presents EPA's schedule for reassessing tolerances and exemptions. The schedule is presented in two tables: In Table 1, column A lists the three tolerance reassessment time frames mandated by FFDCA section 408(q)(1), as established by FQPA; column B estimates the total number of tolerances and exemptions that should be reassessed by the end of each period.

Table 2 is a comprehensive list of the pesticides with tolerances and/or exemptions subject to tolerance reassessment from the date of this notice until August 3, 2006, divided into groups 1, 2, and 3. Where EPA had the information readily available, the pesticides within a group are arranged according to their chemical class; within a chemical class, pesticides are listed alphabetically. The pesticide names listed in Table 2 correspond with their listing in 40 CFR parts 180, 185, and 186, where some common names are also given. Note that each individual pesticide listing may encompass more than one active ingredient. Please refer to the tolerance listings in 40 CFR parts 180, 185, and 186 for further information on the active ingredients covered by specific tolerance citations.

In all, there are a total of 469 pesticides or high-hazard inert ingredients with food use tolerances that are scheduled for reassessment. This includes 228 in group 1, 93 in group 2 and 148 in group 3. Also, there are an additional 823 inert ingredient exemptions that will be dealt with as part of group 3. The total number of pesticides may change during the course of the process, as, for example, in the case of canceled registrations.

VI. Effective Date and Public Response

This schedule is not subject to a formal public comment period, and therefore becomes effective upon publication in the **Federal Register**. Prior to issuance of this notice, EPA involved various stakeholders through the Pesticide Program Dialogue Committee in a public discussion of EPA's tolerance reassessment program and scheduling priorities. Nevertheless, EPA welcomes additional input from interested parties and the general public, in particular: (1) if they believe there are pesticides that should appear on the list but are omitted from it; or (2) if they believe there are pesticides that should be dropped from the list. The Agency will also keep the list of pesticides up-to-date in its periodic reports to Congress on this program. Public responses to this notice should be submitted to the address in the "ADDRESSES" section, with an additional copy sent to Jeff Morris, Special Review and Reregistration Division, at the address and telephone number listed above in the section titled

"FOR FURTHER INFORMATION CONTACT."

The official record for this notice, as well as the public version, has been established for this notice under docket number OPP-300523 (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 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 responses must be submitted in ASCII file format, avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments in electronic form must be identified by the docket control number OPP-300523. Electronic responses to this schedule may be filed on line at many Federal Depository libraries.

Dated: July 31, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

TABLE 1.—TOLERANCE REASSESSMENT TIME TABLE

(A) Tolerance Reassessment Deadlines	(B) Reassessments Required by End of Time Period
August 1999	
33% of all applicable tolerances and exemptions must be reassessed	**3,210** (9,728 × 33%)
August 2002	
66% of all applicable tolerances and exemptions must be reassessed	**6,420** (9,728 × 66%)
August 2006	
100% of all applicable tolerances and exemptions must be reassessed	**9,728** (9,728 × 100%)

Within each group of the following Table 2, pesticides are organized alphabetically within a given chemical class. The chemical class determination is not equivalent to a common mechanism of action determination. Those evaluations are underway. When no chemical class is given, it is assumed that the pesticide is not a member of an identified class of chemicals. Note that the oxime carbamates are structurally different from carbamates; however, it has not been determined if they share a common mechanism of action. A complete alphabetical listing of the chemicals is available in the public docket; also available in the public docket is a list of all chemicals that EPA classifies as carcinogens.

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT

Pesticide	Chemical Class
Group 1 Pesticides	
2-(Thiocyano-methylthio)benzothiazole(TCMB)	
2-Phenylphenol	
4,6-Dinitro-o-cresol and its sodium salt(DNOC)	
Chloramben	
Chloroxuron	
Diethatyl ethyl	
Diphenamid	
Dipropyl isocinchomeronate	
Hexythiazox	
Oxadiazon	
Paraformaldehyde	
S-Ethyl cyclohexylethylthiocarbamate (Cycloate)	
Tetradifon	
Thiram	
Triclopyr	
Formaldehyde	(high-hazard inert ingredient)
Phenol	(high-hazard inert ingredient)
Rhodamine B	(high-hazard inert ingredient)
2-[[4-chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropiionitrile(Cyanazine)	1,3,5-triazine
4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-trizin-5(4*H*)-one (Metribuzin)	1,2,4-triazinone
Atrazine	1,3,5-triazine
Propazine	1,3,5-triazine
Simazine	1,3,5-triazine
Ethalfluralin	2,6-dinitroaniline
N-Butyl-*N*-ethyl-*a,a,a*-trifluoro-2,6-dinitro-*p*-toluidine (Benfluralin)	2,6-dinitroaniline
Oryzalin	2,6-dinitroaniline
Pendimethalin	2,6-dinitroaniline

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Trifluralin	2,6-dinitroaniline
Diclofop-methyl	2-(4-aryloxyphenoxy)propionic acid
Fenoxaprop-ethyl	2-(4-aryloxyphenoxy)propionic acid
Quizalofop-ethyl	2-(4-aryloxyphenoxy)propionic acid
Ammoniates for [ethylenebis-(dithiocarbamate) zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides (Metiram).	alkylenebis(dithiocarbamate)
Coordination product of zinc ion and maneb(Mancozeb)	alkylenebis(dithiocarbamate)
Maneb	alkylenebis(dithiocarbamate)
3,5-Dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide (Pronamide)	amide herbicide (benzamide)
Chlorothalonil	aromatic hydrocarbon derivative
PCNB	aromatic hydrocarbon derivative
2,4-D	aryloxyalkanoic acid
1-(4-chlorphenoxy)-3,3-dimethyl-1(1*H*-1,2,4-triazol-1-yl)(Triadimefon)	azole
1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole (Propiconazole).	azole
Beta-(4-chlorophenoxy)alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol(Triadimenol).	azole
Cyproconazole	azole
Difenoconazole	azole
Fenbuconazole	azole
Hexaconazole	azole
Myclobutanil	azole
Tebuconazole	azole
Triflumizole	azole
Benomyl	benzimidazole
Imazalil	benzimidazole
Thiabendazole	benzimidazole
Thiophanate methyl	benzimidazole
Bromoxynil	benzonitrile
Dichlobenil	benzonitrile
Diflubenzuron	benzoylurea
Paraquat dichloride	bipyridylium
2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate (Bendiocarb)	carbamate
Asulam	carbamate
Carbaryl	carbamate
Carbofuran	carbamate
CIPC (Chlorpropham)	carbamate
Desmedipham	carbamate
Formetanate HCl	carbamate
Phenmedipham	carbamate
2-Chloro-*N*-isopropylacetanilide(Propachlor)	chloroacetanilide
Acetochlor	chloroacetanilide
Alachlor	chloroacetanilide
Metolachlor	chloroacetanilide
3-(3,5-Dichlorophenoxy)-5-ethenyl-5-methyl-2,4 oxazolidinedione(Vinclozolin)	dicarboximide
Iprodione	dicarboximide
Procymidone	dicarboximide
Sodium dimethyldithiocarbamate	dimethyldithiocarbamate
2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate (Dinocap).	dinitrophenol derivative
Lactofen	diphenyl ether
Oxyfluorfen	diphenyl ether
Sodium salt of fomesafen	diphenyl ether
Sodium salt of acifluorfen	diphenyl ether
Diphenylamine	diphenylamine
Amitraz	formamidine
Aluminum phosphide	fumigant (phosphide)
Ethylene oxide	fumigant (miscellaneous)
Magnesium Phosphide	fumigant (phosphide)

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Propylene oxide	fumigant (miscellaneouos)
Zinc Phosphide	fumigant (phosphide)
Captan	*N*-trihalomethylthio
Folpet	*N*-trihalomethylthio
Cacodylic Acid	organo arsenical
1,1-Bis(*p*-chlorophenyl)-2,2,2-trichloroethanol(Dicofol)	organochlorine
Endosulfan	organochlorine
Lindane	organochlorine
Methoxychlor	organochlorine
Cadusafos	organophosphorus
2,2-Dichlorovinyl dimethyl phosphate(Dichlorvos)	organophosphorus
Acephate	organophosphorus
Chlorpyrifos	organophosphorus
Chlorpyrifos methyl	organophosphorus
Coumaphos	organophosphorus
Diazinon	organophosphorus
Dimethoate including its oxygen analog	organophosphorus
Dimethyl phosphate of 3-hydorxy-*N,N*-dimethyl-cis-crotonamide(Dicrotophos)	organophosphorus
Ethion	organophosphorus
Ethoprop	organophosphorus
Ethyl 3-methyl-4-(methylthio) phenyl(1-methylethyl)phosphoramidate(Fenamiphos)	organophosphorus
Fenitrothion	organophosphorus
Malathion	organophosphorus
Methamidophos	organophosphorus
Methidathion	organophosphorus
Methyl 3-[dimethoxy phosphinyl)oxy]butenoate, alpha and beta isomers(Mevinphos).	organophosphorus
N-(Mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog(Phosmet).	organophosphorus
Naled	organophosphorus
O,O-Dimethyl *O*-(4-nitro-*m*-tolyl)phosphorothioate(Fenthion)	organophosphorus
O,O-Dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-ylmethyl]phosphorodithioate (Azinphos-methyl).	organophosphorus
O,O-Diethyl *S*-[2-(ethylthio)ethyl]phosphorodithioate(Disulfoton)	organophosphorus
O-Ethyl *S*-phenyl ethylphosphonodithioate(Fonofos)	organophosphorus
O-[2-(1,1-Dimethylethyl)-5-primidinyl] *O*-ethyl-*O*-(1-methylethyl phosphorothioate(Phostebupirim).	organophosphorus
Parathion (methyl and ethyl)	organophosphorus
Phorate	organophosphorus
Phosphorothioic acid, *O,O*-diethyl *O*-(1,2,2,2-tetrachloroethyl) ester(Chlorethoxyfos)	organophosphorus
Pirimiphos methyl	organophosphorus
Profenofos	organophosphorus
Propetamphos	organophosphorus
S,S,S-Tributyl phosphorotrithioate(DEF)	organophosphorus
S-(*O,O*-Diisopropyl phosphorodithioate) of *N*-(2-mercaptoethyl)benzenesulfonamide (Bensulide).	organophosphorus
S-[2-(Ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate(Oxydemeton methyl)	organophosphorus
Terbufos	organophosphorus
Propargite	organosulfur
Triphenyltin hydroxide (TPTH)	organotin
Aldicarb	oxime carbamate
Methomyl	oxime carbamate
Oxamyl	oxime carbamate
Thiodicarb	oxime carbamate
Oxadixyl	phenylamide
Dimethyl tetrachloroterephthalate(DCPA)	phthalic acid
Cypermethrin	pyrethroid
Permethrin	pyrethroid
Pyrithiobac-sodium	pyrimidinyloxybenzoic analogue
Mepiquat chloride	quaternary ammonium
6-methyl-1,3-dithiolo [4,5-b]quinoxalin-2-one(Oxythioquinox)	quinoxaline
5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole(Terrazole)	Thiazole
Butylate	thiocarbamate
S-2,3,3-Trichloroallyl diisopropylthiocarbamate(Tri-allate)	thiocarbamate

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
S-Ethyl hexahydro-1*H*-azepine-1-carbothioate(Molinate)	thiocarbamate
S-Ethyl dipropylthiocarbamate (EPTC)	thiocarbamate
S-Propyl dipropylthiocarbamate(Vernolate)	thiocarbamate
S-Propyl butylethylthiocarbamate(Pebulate)	thiocarbamate
Thiobencarb	thiocarbamate
Bromacil	uracil
Terbacil	uracil
The remaining pesticides in Group 1 no longer have registered food uses, and EPA has begun the process of proposing to revoke the tolerances associated with these pesticides.	
(*E,Z*)-3,13-octadecadien-1-ol acetate and (*Z,Z*)-3,13-octadecadien-1-ol acetate	
B-Naphthyloxyacetic acid	
1-(8-Methoxy-4,8-dimethylnonyl)-4(1-metylethyl)benzene	
1-methyl 2-[[ethoxy-[(1-methylethyl amino]phosphinothioyl)oxy)benzoate (Isofenfos)	
1-Triacontanol	
2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate (Tetrachlorvinphos)	
2-Chloro-*N,N*-diallylacetamide(Allidochlor)	
2-(*m*-Chlorophenoxy) propionic acid(Cloprop)	
2,3,6-Trichlorophenylacetic acid(Chlorfenac)	
2,3,5-Triiodobenzoic acid	
2,4-Dichloro-6-*o*-chloranilino-*s*-triazine (Anilazine)	
2,6-dimethyl-4-tridecylmorpholine	
3,4,5-Trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate	
3,5-Dimethyl-4-(methylthio)phenyl methyl carbamate(Methiocarb)	
Acetaldehyde	
Alternaria cassiae	
Ammonium nitrate	
Ammonium sulphamate	
Biphenyl	
Butanoic anhydride	
Butralin	
Calcium cyanide	
Calcium oxide	
Captafol	
Chlorosulfamic acid	
Chlorthiophos	
Copper acetate	
Copper oleate	
Copper linoleate	
Copper sulfate monohydrate	
Copper-zinc-chromate complex	
Cyhexatin	
Cyprazine	
Dalapon	
Dialifor	
Dichlone	
Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate	
Dioxathion	
Ethyl formate	
Ethyl 4,4′-dichlorobenzilate(Chlorobenzilate)	
Fluchloralin	
Fumaric acid	
Glyodin	
Hirsutella thompsonii	
Hydrogen cyanide	
Isobutyric acid	
Isopropyl carbanilate (IPC)	
Manganous dimethyldithio-carbamate (Manam)	
Mefluidide	
Methazole	
Methyl eugenol and malathion combination	
Methyl alpha-eleostearate	
Methylene chloride	
Metobromuron	

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Monocrotofos	
N-Propyl isomer	
O-Ethyl *O*-[4-(methylthio)phenyl] *S*-propy phosphorothioate	
Phosalone	
Phosphamidon	
Potassium carbonate	
Potassium polysulfide	
Potassium ricinoleate and related C_{12}-C_{18} fatty acid salts	
Ryania alkaloids	
S-2,3-Dichloroallyl diisopylthiocarbamate.	
sec-Butylamine	
Sesone	
Sodium benzoate	
Sodium dehydroacetate	
Sodium polysulfide	
Sodium propionate	
Sodium sesquincarbonate	
Sorbic acid	
Sorbic acid, potassium salt	
Sulfur dioxide	
Temefos	
Terbutryn	
Tetraethyl pyrophosphate	
Tetraiodoethylene	
Zinc sulfate, basic	
Zineb	
Group 2 Pesticides	
4-Aminopyridine	
Aromatic Solvents	
Cholecalciferol	
Clomazone	
Dodine	
Endothall	
Fosetyl-al	
Hydramethylnon	
Iodine-detergent complex	
Mercaptobenzothiazole,2-	
Methanearsonic Acid, Salts	
Napthaleneacetamide	
Napthaleneacetic acid	
Nicotine.	
Nitrapyrin	
Pine oil	
Rotenone	
Ryanodine	
Sabadilla Alkaloids	
Sodium chlorate	
Sodium chlorite	
Tridiphane	
Urea sulfate	
Ametryn	1,3,5-triazine
Cyromazine	1,3,5-triazine
Prometryn	1,3,5-triazine
Fluazifop butyl, isomers	2-(4-Aryloxyphenoxy) propionic acid
N,N-Diethyl-2-(1-naphthalenyloxy)-propiionamide(Napropamide)	amide herbicide (aryloxyalkanamide)
N-1-Naphthyl phthalamic acid	amide herbicide
Propanil	amide herbicide (anilide)
2,6-Dichloro-4-nitroaniline(Dichloran)	aromatic hydrocarbon derivative
Chloroneb	aromatic hydrocarbon derivative
4-(2,4-Dichlorophenoxy) butryic acid (2,4-DB)	aryloxyalkanoic acid
MCPA	aryloxyalkanoic acid

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
MCPB	aryloxyalkanoic acid
Mecoprop	aryloxyalkanoic acid
p-Chlorophenoxyacetic acid	aryloxyalkanoic acid
Abamectin	avermectin
Ethofumesate	benzofuranyl alkanesulfonate
Dicamba	benzoic acid
Clethodim	cyclohexanedione oxime
Sethoxydim	cyclohexanedione oxime
Chloropicrin	fumigant (halogenated)
Methyl Bromide	fumigant (halogenated)
Fenridazon-K	hybridizing agent
Imazaquin	imidazolinone
Imazethapyr, ammonium salt	imidazolinone
Methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-metyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate (Imazethabenz).	
Methyldithiocarbamate salts (metam sodium and potassium salt)	isothiocyanate
Metaldehyde	molluscicide
Fenbutatin-oxide	organotin
Carboxin	phenylamide
Flutolanil	phenylamide
Triforine	piperazine
Allethrin (allyl homolog of cinerin I)	pyrethroid
Bifenthrin	pyrethroid
Cyfluthrin	pyrethroid
Deltamethrin	pyrethroid
Fenpropathrin	pyrethroid
Fenvalerate	pyrethroid
Fluvalinate	pyrethroid
Lambda cyhalothrin	pyrethroid
Pyrethrin	pyrethroid
Resmethrin	pyrethroid
Tefluthrin	pyrethroid
Tralomethrin	pyrethroid
zeta-Cypermethrin	pyrethroid
Fluridone	pyridazinone / pyridone
Norflurazon	pyridazinone / pyridone
Pyrazon	pyridazinone / pyridone
Ethoxyquin	quinoline
Dimethipin	substituted dithiin
Bensulfuron methyl ester	sulfonylurea
Chlorimuron ethyl	sulfonylurea
Chlorsulfuron	sulfonylurea
Halosulfuron	sulfonylurea
Metsulfuron-methyl	sulfonylurea
Nicosulfuron	sulfonylurea
Primisulfuron methyl	sulfonylurea
Prosulfuron	sulfonylurea
Rimsulfuron	sulfonylurea
Thifensulfuron methyl	sulfonylurea
Triasulfuron	sulfonylurea
Triflusulfuron-methyl	sulfonylurea
Tribenuron methyl	sulfonylurea
n-Octyl bicycloheptenedicarboximide	synergist
Piperonyl Butoxide	synergist
Clofentezine	tetrazine
Diuron	urea
Fluometuron	urea
Linuron	urea
Tebuthiuron	urea
Thidiazuron	urea
Group 3 Pesticides	
Ammonia	
Benzaldehyde	
Benzoic acid	
Boric acid and its salts	

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Calcium hypochlorite	
Calcium polysulfide	
Candida oleophilia isolate I-182	
Carbon and carbon dioxide	
Carbon disulfide	
Chlorine gas	
Cinnamaldehyde	
Combustion gas product	
Copper carbonate, basic	
Copper	
Copper hydroxide	
Copper sulfate, basic	
d-Limonene	
Diatomaceous earth	
Food-use inert ingredients (see 40 CFR part 180.1001 for a listing of inert exemptions).	
Methyl anthranilate	
Mineral Oil	
Nitrogen	
Nosema locustae	
Oxytetracycline	
Polyoxymethylene copolymer	
Polyvinyl chloride	
Potassium oleate and related C_{12}-C_{18} fatty acid potassium salts	
Propionic acid	
Sodium diacetate (acetic acid)	
Sodium metasilicate	
Spinosad	
Streptomycin	
Xylene	
Dimethenamid, 2-chloro-*N*-[(1-methyl-2methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide.	amide herbicide
Isoxaben	amide herbicide
Beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl-1*H*-1,2,4-triazole-1-ethanol (Bitertanol).	azole
Tebufenozide	benzoic acid hydrazide
Bentazon	benzothiadiazole
(Z)-11-Hexadecenal	biopesticide
1,4-Dimethylnaphthalene	biopesticide
3,7,11-Trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol.	biopesticide
6-benzyladenine	biopesticide
Acrylate polymers and copolymers	biopesticide
Allyl isothiocyanate as a component of food grade oil of mustard	biopesticide
Ampelyoyces quisqualis isolate M-10	biopesticide
Aqueous extract of seaweed meal (Cytokinin)	biopesticide
Arthopod pheromones	biopesticide
Azadirachtin	biopesticide
Bacillus thuringiensis fermentation solids and/or solubles	biopesticide
Bacillus subtilis MBI 600	biopesticide
Bacillus subtilis GB03	biopesticide
Bacillus popilliae & B. lentimorbus	biopesticide
Bacillus thuringiensis CryIIIA delta-endotoxin and the genetic material necessary for its production..	biopesticide
Bacillus thuringiensis CryIA(b)delta-endotoxin and the genetic material necessary for its production(plasmid vector pCIB4431) in corn..	biopesticide
Beauveris bassiana strain GHA	biopesticide
Biochemical pesticide plant floral volatile attractant compounds	biopesticide
Burkholderia (pseudomonas) cepacia type Wisconsin isolate/strain J82	biopesticide
Clarified hydrophobic extract of neem oil	biopesticide
Codlure, (E,E)-8,10-Dodecadien-1-ol	biopesticide
CryIA(c) and CryIC derived delta-endotoxins of Bacillus thuringiensis var. kurstaki encapsulated in killed Pseudomonas fluorescens, and the expression plasmid and cloning vector genetic constructs.	biopesticide

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Delta endotoxin of Bacillus thuringiensis variety San Diego encapsulated into killed Pseudomonas fluorescens.	biopesticide
Delta endotoxin of Bacillus thuringiensis variety kurstaki encapsulated into killed Pseudomonas fluorescens.	biopesticide
Dihydro-5-pentyl-2(3H)-furanone	biopesticide
Dihyroazadirachtin	biopesticide
Egg solids, whole	biopesticide
Ethylene	biopesticide
Food and food by-products (meat meal, redpepper)	biopesticide
GBM-ROPE(Dodecenyl acetate)	biopesticide
Gibberellic acid	biopesticide
Gibberellin A4 mix with G A7	biopesticide
Gliocladium virens G-21	biopesticide
Gossyplure	biopesticide
Ground Sesame Stalks	biopesticide
Heliothis zea NPV	biopesticide
Hexadecadienol acetates	biopesticide
Hydroprene	biopesticide
Inclusion bodies of the multi-nuclear polyhedrosis virus of Anagrapha falcifera	biopesticide
Indole	biopesticide
Indole-3-butyric acid (IBA)	biopesticide
Inert ingredients of semiochemical dispensers	biopesticide
Isomate-C	biopesticide
Isomate-M (Dodecen-1-yl acetate)	biopesticide
Jojoba Oil	biopesticide
Killed Myrothecium verrucaria	biopesticide
Lactic acid	biopesticide
Lagenidium giganteum	biopesticide
Lepidopteran pheromones	biopesticide
Menthol	biopesticide
Metarhizium anisopliae ESF1	biopesticide
Methoprene	biopesticide
Neomycin phosphototransferase II	biopesticide
Occlusion bodies of the Granulosis Virus of Cydiapomonella	biopesticide
Oil of orange	biopesticide
Oil of lemon	biopesticide
Parasitic (parasitoid) and predatory insects	biopesticide
Pasteuria penetrans	biopesticide
Pelargonic acid	biopesticide
Phytophthora palmivora, chlamydospores of	biopesticide
Plant volatiles and pheromone(Dimethylcyclohexylidene acetaldehyde and Dimethylcyclohexylidene ethanol).	biopesticide
Poly-*D*-glucosamine (chitosan)	biopesticide
Poly-*N*-acetyl-*D*-glucosamine	biopesticide
Polyhedral occlusion bodies of Autographa californica nuclear polyhedrosis virus	biopesticide
Pseudomonas fluorescens Strain NCIB	biopesticide
Pseudomonas fluorescens 1629RS	biopesticide
Pseudomonas fluorescens 742RS	biopesticide
Pseudomonas syringae (ESC 11)	biopesticide
Pseudomonas syringae (ESC 10)	biopesticide
Pseudomonas fluorescens EG-1053	biopesticide
Pseudomonas fluorescens A506	biopesticide
Puccinia canaliculata	biopesticide
Sodium 5-nitroguaiacolate	biopesticide
Sodium *p*-nitrophenolate	biopesticide
Sodium *o*-nitrophenolate	biopesticide
Spodoptera exigua nuclear polyhedrosis virus	biopesticide
Streptomyces griseoviridis	biopesticide
Tomato pinworm insect pheromone(Tridecenyl acetates)	biopesticide
Trichoderma harzianum, Rifai strain KRL-AG2	biopesticide
Viable spores of the microorganism Bacillus thuringiensis Berliner	biopesticide
Watermelon mosaic virus-2	biopesticide
Difenzoquat	bipyridylium
Diquat	bipyridylium
Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide	chloroacetanilide

TABLE 2.— PESTICIDES SUBJECT TO TOLERANCE REASSESSMENT—Continued

Pesticide	Chemical Class
Imidacloprid	chloronicotine
Ethephon	ethylene generator
Sodium tetrathiocarbonate	fumigant (miscellaneous)
Sulfosate	glyphosate salts
Pyridazinecarboxylic acid	hybridizing agent
Maleic hydrazide	hydrazide (plant growth regulator)
Cadre	imidazolinone
Pyridinecarboxylic acid, 2-(4,5-dihydro-4-methyl-4	imidazolinone
Fluorine compounds(Cryolite)	Inorganic fluorine compound
(*R*)-2(2,6-dimethylphenyl)-methoxyacetylamino)-propionic acid methyl ester	phenylamide
Mefenoxam	phenylamide
Metalaxyl	phenylamide
Glufosinate ammonium	phosphono amino acid
Glyphosate	phosphono amino acid
Flumiclorac pentyl	phthalimide
Cyano(3-phenoxyphenyl)methyl cis/tran-3-(2,2-dichloethenyl)-2-	pyrethroid
Pyridate	pyridazinone/pyridone
Clopyralid	pyridine carboxylic acid
Picloram	pyridine carboxylic acid
Pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro)	pyridinecarboxylic acid
Fenarimol	pyrimidine
3,7-Dichloro-8-quinoline carboxylicacid(Quinclorac)	quinolinecarboxylic acid
Hexazinone	triazinone (triazine dione)
Flumetsulam	triazolopyrimidine sulfonanilide

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Monday
August 4, 1997

Part VI

The President

Proclamation 7016—To Implement an Accelerated Schedule of Duty Elimination Under the North American Free Trade Agreement

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7016 of July 31, 1997

To Implement an Accelerated Schedule of Duty Elimination Under the North American Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On December 17, 1992, the Governments of Canada, Mexico, and the United States of America entered into the North American Free Trade Agreement ("the NAFTA"). The NAFTA was approved by the Congress in section 101(a) of the North American Free Trade Agreement Implementation Act ("the NAFTA Implementation Act") (19 U.S.C. 3311(a)) and was implemented with respect to the United States by Proclamation 6641 of December 15, 1993.

2. Section 201(b) of the NAFTA Implementation Act (19 U.S.C. 3331(b)) authorizes the President, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)), to proclaim accelerated schedules for duty elimination that the United States may agree to with Mexico or Canada. Consistent with Article 302(3) of the NAFTA, I, through my duly empowered representative, on March 20, 1997, entered into an agreement with the Government of Canada and the Government of Mexico providing for an accelerated schedule of duty elimination for specific goods. Consultation and layover requirements of section 103(a) of the NAFTA Implementation Act with respect to such schedule of duty elimination have been satisfied.

3. Pursuant to section 201(b) of the NAFTA Implementation Act, I have determined that the modifications hereinafter proclaimed of duties on goods originating in the territory of a NAFTA party are necessary or appropriate to (i) maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada and Mexico provided for by the NAFTA and (ii) to carry out the agreement with Canada and Mexico providing an accelerated schedule of duty elimination for specific goods.

4. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) ("the Trade Act"), authorizes the President to embody in the Harmonized Tariff Schedule of the United States ("the HTS") the substance of the relevant provisions of acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 201(b) of the NAFTA Implementation Act and section 604 of the Trade Act, do proclaim that:

(1) In order to provide for an accelerated schedule of duty elimination for specific goods, the tariff treatment set forth in the HTS for certain NAFTA originating goods is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The amendments made to the HTS by the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 1997.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, 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-second.

William J. Clinton

Billing code 3195–01–P

Annex

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES ("HTS") WITH RESPECT TO THE TARIFF TREATMENT OF CERTAIN GOODS ORIGINATING IN THE TERRITORY OF CANADA OR MEXICO

Section A. Effective with respect to goods of Canada under the terms of general note 12 of the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, the Harmonized Tariff Schedule of the United States ("HTS") is modified as follows:

(1). For subheadings 7901.12.10, 7901.12.50 and 9603.50.00, the Rates of Duty 1 Special subcolumn is modified by deleting the rate of duty and the "(CA)" following such rate and inserting "CA," in alphabetical order, in the parentheses following the "Free" rate of duty in such subcolumn.

(2). The following subheadings are inserted in numerical sequence in subchapter V of chapter 99 to the HTS. The subheadings are set forth in columnar format, and material in such columns are set forth in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively. Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods of Canada,...:]	
"9905.20.25	Tahini (provided for in subheading 2008.19.90).....	Free (CA)
9905.39.21	Polyethylene film coated with heat activated adhesive (provided for in subheading 3921.90.50).....	Free (CA)
9905.44.21	Venetian blinds of wood (provided for in subheading 4421.90.40).....	Free (CA)
9905.54.20	Elastomeric monofilaments of polyurethane (provided for in subheading 5404.10.80).....	Free (CA)
9905.56.04	Imitation catgut (provided for in subheading 5604.90).....	Free (CA)
9905.68.15	Briquettes for gas fuel barbecues (provided for in subheading 6815.99.40 or 6914.90.80)...	Free (CA)
9905.73.40	Screws and bolts, whether or not with their nuts or washers, for aircraft (provided for in subheading 7318.15, 7508.90 or 8108.90.30).....	Free (CA)
9905.91.07	Appliance timers (provided for in heading 9107).....	Free (CA)
9905.91.14	Parts for appliance timers of heading 9107 (provided for in subheading 9114.90.30 or 9114.90.50).....	Free (CA)"

Section B. Effective with respect to goods of Mexico under the terms of general note 12 of the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, the Harmonized Tariff Schedule of the United States ("HTS") is modified as follows:

(1). For the following subheadings, the Rates of Duty 1 Special subcolumn is modified by deleting the staged rate of duty and the "(MX)" following such rate and by inserting "MX", in alphabetical order, in the parentheses following the "Free" rate of duty in such subcolumn.

2005.90.80	7901.12.10
2933.90.87	8536.50.80
5605.00.10	8714.91.90
5605.00.90	

Annex (continued)

Section B. (con.):

(2). The following subheadings are inserted in numerical sequence in subchapter VI of chapter 99 to the HTS. The subheadings are set forth in columnar format, and material in such columns are set forth in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively. Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods of Mexico,...:]	
"9906.29.33	Trimethoprim (provided for in subheading 2933.59.22).....	Free (MX)

9906.29.35	Sulfamethoxazol (provided for in subheading 2935.00.48).....	Free (MX)
9906.44.21	Venetian blinds of wood (provided for in subheading 4421.90.40).....	Free (MX)
9906.59.03	Woven fabrics of polypropylene, coated or laminated with plastics on one side only (provided for in subheading 5903.90.25).....	Free (MX)
9906.63.02	Towels of cotton, printed, other than terry toweling or similar terry fabrics (provided for in subheading 6302.91.00).....	Free (MX)
9906.73.18	Screws and bolts, whether or not with their nuts or washers, for aircraft (provided for in subheading 7318.15).....	Free (MX)"

[FR Doc. 97-20606
[Filed 8-1-97; 8:45 am]
Billing code 3190-01-C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Saab; published 6-20-97

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LIST OF PUBLIC LAWS

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H.J. Res. 90/P.L. 105–32

Waiving certain enrollment requirements with respect to two specified bills of the One Hundred Fifth Congress. (Aug. 1, 1997; 111 Stat. 250)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

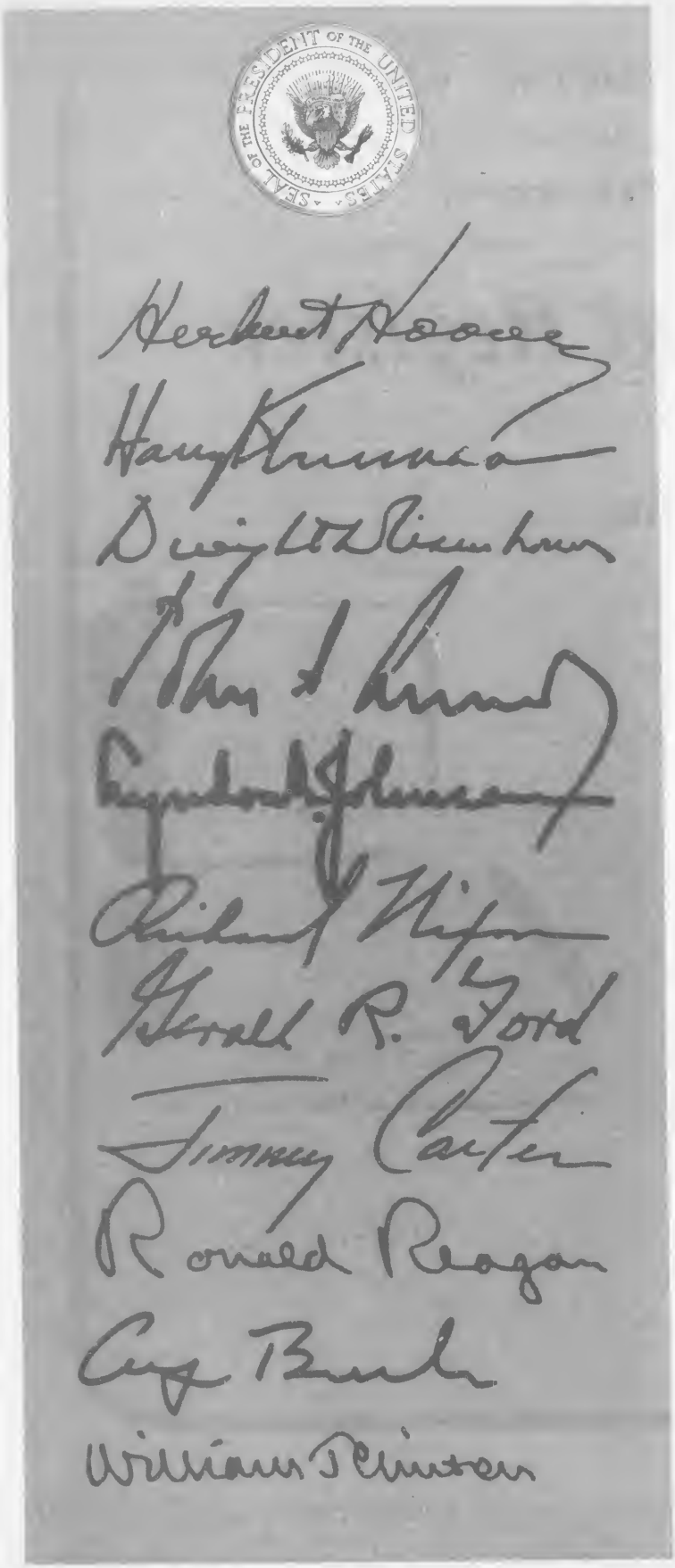
[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.



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